THE WORLD OF TO-DAY

FOREIGN GOVERNMENTS AT WORK

AN INTRODUCTORY STUDY

BY

HERMAN FINER, B.Sc. (Econ.) Lond.

ASSISTANT IN THE DEPARTMENT OF PUBLIC ADMINISTRATION LONDON
SCHOOL OF ECONOMICS

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FOREIGN GOVERNMENTS AT WORK

THE WORLD OF TO-DAY

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1921

TO MY

PARENTS

AND

H. B. LEES SMITH

PREFACE

THESE chapters are intended to present in perspective the most salient facts about present-day government. Limits of space compelled brevity where truth depended on much modification, and complete omission of matters interesting and important in themselves. But I shall be content if these pages serve to induce others to go to the books to which reference has been made.

Local Government is of the utmost importance, and deserves a book to itself: since I could not do it adequate justice within my limits, and be intelligible, I have preferred to leave it out altogether.

A word of guidance may be useful to Study Circles. No chapter is really complete in itself; or, rather, passages in each chapter are commentaries on the contents of other chapters, and therefore, after the first reading, one should look at the index, and take each subject—e.g. Second Chambers, Presidents, Electoral Methods—as it is referred to in different chapters. In that way one can study the institutions of a country as a single system; and then study the similar institutions in different countries. In the Bibliography are mentioned only a few outstanding books; the more important bibliography will be found in the references.

I sincerely thank Mr. H. J. Laski for reading my MS. and offering me most stimulating and valuable suggestions.

H. F.

Mrs. Alving : 'I almost think we're all of us Ghosts, Pastor Manders. It's not only what we have inherited from our father and mother that "walks" in us. It's all sorts of dead ideas, and lifeless old beliefs, and so forth. They have not vitality, but they cling to us all the same, and we can't get rid of them. Whenever I take up a newspaper I seem to see Ghosts gliding between the lines. There must be Ghosts all the country over, as thick as the sand of the sea. And then we are one and all so pitifully afraid of the light.'

IBSEN, *Ghosts.*

'Es erben sich Gesetz' und Rechte
Wie ein ew'ge Krankheit fort;
. . . . .
Weh dir, dass du ein Enkel bist!
Vom Rechte, das mit uns geboren ist,
Von dem ist, leider! nie die Frage.'

GOETHE.

'Meanwhile, it is singular how long the rotten will hold together, provided you do not handle it roughly. For whole generations it continues standing, "with a ghastly affectation of life," after all life and truth has fled out of it: so loth are men to quit their old ways; and, conquering indolence and inertia, venture on new.'

CARLYLE, *French Revolution.*

CONTENTS

ERRATA

Page 22, line 23, *add after* 'National Assembly,' 'and the previous acceptance of the amendment by each House separately.'

„ 33, line 17, *for* 'sixteen' *read* 'twenty since 1920.'

„ 73, „ 4, *for* 'seven' *read* 'four.'

„ 81, footnote, *for* 'Masses Publishing Co.' *read* 'Milwaukee Social Democratic Publishing Co.'

FOREIGN GOVERNMENTS AT WORK

CHAPTER I

INTRODUCTORY

I

REFLECTION and observation show the truth of the phrase that eternal vigilance is the price of democracy. And if reflection on government was unusual with the mass of the people before the war, then the action of Governments the world over in entering into war, in organizing for war, and in concluding the Treaty of Versailles, would show in the most urgent fashion the need for the thought that was absent.

With this in mind one may turn to consider the rules and workings of Governments in some of the principal countries to-day. Since observation is useless unless it is properly directed, it is better first to discuss several leading ideas before taking up the actual institutional structure of systems of government. The institutions of such may be worse than uninstructive, perfectly misleading, without a preliminary understanding of the fundamental issues and meanings of the problems involved in modern administration. Instruments of criticism are necessary, 'what you ought to look for,' in the government of modern political societies. To drive the matter home, we may refer to the uncritical enthusiasm displayed by untrained observers in their reports on Soviet Russia, and the illuminating reports of competent observers. On the matter of the various reports in the Press and in book form hung the whole question of maintaining

ufficient hatred of a mysterious entity, 'Bolshevist Russia,' to warrant the expenditure of millions of hard-arned money on a 'sort of war,' and to warrant the ontinued blockade of Russia, with all that modern lockade means to a stricken country. There is no ques-ion here of rights and wrongs in the policy adopted by arious Governments; there is only the emphatic insistence pon the need for principles of criticism.

II

The problem of government is the problem of power. ower is wielded by certain people elevated to the position f 'Government'; the methods of such elevation will be onsidered later. However the government is constituted t wields a power in relation to the inhabitants of a certain erritory. Its power is the making of rules of public onduct and the execution of them, and nowadays the rocesses of legislating and executing resolve themselves nto the provision of a multitude of services vital to the ife of the modern State. There is thus an immediate onnection, not a separation, between those whose func-ions it is to maintain the continuous supply of the ervices and the citizens who live by the services. Unless hat connection between the mass of the people, the fficial, and the legislator, is *living*, unless it takes its root n the natural weakness and strength of the various parties o the connection, government will be a barren and un-omfortable thing. Immediately it has its sources in a heory outside that of the essential and unique humanity f the individual,[1] and the personality of groups like rade Unions, the Churches, Freemasons' Lodges, Artists' eagues, and so forth, it has to resort to the weapon of he old theorists of Sovereignty—coercion. This power, hen, which is the subject matter of government, is fun-lamentally and emphatically a *human* matter, and he literature of government has in late years more and nore drawn its inspiration from the physiologist and

[1] As, for instance, in Hegel's *Philosophie de Rechts*, for which cf. Iobhouse, *Metaphysical Theory of the State*.

psychologist.[1] It is realized that the official, for instance, is concerned, not merely with forms, but with the destinies of toiling eager human beings,[2] that the clauses of the law will affect human desires and wills.

What is the extent of this power wielded by Government, or, to express the same thing in a different way, the services performed by Government? The extent is not a fixed quantity: it varies with the changing purpose of Society. Civilization moves, and, according to its main trend, the services performed by the Government are determined; that is to say, there is a changing substance of service expected by people from Government. In the eighteenth century such substance was small, and consisted mainly of the three categories, national defence, the maintenance of internal security, and justice. The industrial revolution specialized occupations and rendered interests more interdependent, and instead of merely 'keeping the ring,' Government needed to enter into the minute regulation and provision of services without which complex societies become confused societies.[3] The need for continuity in a credit-society, uniformity, efficiency, large-scale operation, the almost complete disappearance of the distinction between 'self-regarding' and 'other-regarding' actions, formulated by John Stuart Mill, have remarkably increased the obligations of government. The best illustration of such increase lies in the annual volumes of Statutory Orders and Regulations, or in the Machinery of Government Committees' Report.[4] Anyone who looks into these documents will notice how the Government of the United Kingdom serves the citizen from a few weeks before he is born[5]—in the Maternity Clinics and Centres—

[1] Cf. the fine analyses of Prof. Graham Wallas, *Human Nature in Politics*, *The Great Society*, and *Our Social Heritage*; Walter Lippmann, *Preface to Politics*, and compare the actual use made of such principles in the *Minority Report of the Poor Law Commission*, 1911, the *State and the Doctor*, by S. and B. Webb. See also *Preventive Medicine*, by Sir G. Newman, a publication of the Ministry of Health.

[2] Cf. Sir Wm. Beveridge, *The Public Service in War and Peace*, p. 38; Wallas, *Great Society*, p. 269 et seq.

[3] Cf. Dicey, *Law and Opinion*, second edition; Jethro Brown, *Underlying Principles of Modern Legislation*.

[4] Cd. 9230.

[5] Cf. Maternity and Child Welfare Act, 1918.

until some days after he is dead—by forbidding burials except in certain statutorily-defined places. We may notice a further description of government functions by two amazingly able public servants[1]: 'Nowadays we find not only that these primary political functions are greatly swollen in volume, but also that a whole array of new duties have been thrown on the political machinery, from the organization of an extensive service of public health,[2] including the most elaborate provision for the sick and infirm of all kinds, the infants and the aged, up to the direction of such industries as coal-mining and transport; from education of every grade and kind to the promotion of invention and research, and actually to the planting of timber and the manufacture of sugar; from the insurance of two-thirds of the population and their deposit banking on a gigantic scale, up to the provision of houses for them to live in and the regulation of their daily supplies of food and clothing; from the determination of wages to the fixing of prices and rents.' — What check is there upon the use of this power? Not mere 'responsibility to God and the statesman's own conscience.'[3] The only check useful in the long run is the individual judgment, untrammelled and firmly expressed. The individual alone can say whether he is or is not satisfied with the Government's services. It is worse than useless for the Government to offer 'good' services (services men ought to be content with, if only their natures were such as statesmen think they ought to be). The final test is individual criticism. Thus, even allowing for the fact that many people are ignorant of what is good for them, it is still true that statesmen and officials will err in their attempts at the attainment of the public satisfaction unless their counsels and their acts are constantly quickened by public advice and consent. It is destructive of public morals to establish a

[1] Cf. S. and B. Webb, *Socialist Commonwealth of Great Britain*, p. 73.

[2] Cf. especially Ministry of Health Act, 1919; and Bannington, *Public Health Administration*.

[3] This old trite phrase was urged as late as the middle of 1919 by a speaker in a debate in the German National Assembly on control of foreign affairs. Cf. Heilfron, *Die Deutsche Nationalversammlung in Jahre* 1919, vol. v, p. 3157.

form of government of which it can be said ' that no one can live except by breaking the law.' [1] Modern statesmen talk, then, of ' trying to take the country with them ' into new policies. They act on Cromwell's essential truth when he said: ' It is not the manner of settling these constitutional things, or the manner of one set of men or another doing it; there remains always the grand question after that; the grand question lies in the acceptance of it by those who are concerned to yield obedience to it and accept it.' [2] Conceive the burning indignation produced by a baulked interest which vainly questions the administration of a public service, the craven-hearted attitude towards the things that concern you most in the body politic, induced by non-responsible government and the ' insolence of office '; conceive the level to which they debase unique and sovereign human nature, and the need for the individual check on the action of government becomes more clear.

Most modern communities do not, then, deny that the source of public authority lies in the heart and mind of the citizen. They accept the position (and it is very modern, its formulation about a century old, its realization not yet complete) that if you wish to allow for self-respect and social development on the part of the individuals, the government of all must be based upon the consent of all. If you wish to bring out latent good you must take the risk of latent evil. The State was once sovereign, and Louis XIV could equate his will with that of the State. Now the State is coming to be the individual citizen, in so far as he can question the use of power by the Government, and not only question it, but make it compensate him if it has acted out of due accordance with law.[3]

We therefore have a rough test of government in the extent to which satisfactory institutions are established

[1] Bertrand Russell, *The Practice and Theory of Bolshevism*, p. 78 et seq.

[2] Morley, *Oliver Cromwell*, p. 355.

[3] Cf. Léon Duguit, *Law of Modern State*, an interesting study, translated by F. and H. Laski. H. J. Laski, *Studies in the Problem of Sovereignty*, and *Authority in the Modern State*, a rich piece of work by the same author.

to give adequate opportunity for (*a*) intimate and living connection between government and people, (*b*) performance of necessary functions, (*c*) expression of dissent and approval by the people and subsequent functioning of government according to such expression. These are the 'Somewhat Fundamental,'[1] which Cromwell said must be found in every State. In 1914 practically all countries had accepted this 'Somewhat Fundamental' as the basis of their government, the great exceptions being Germany and Russia, and even in these authority-ridden States there were stormy currents of opinion against the existing regime, and in favour of a system of government in which the governors could be questioned and if necessary changed. But, in spite of this fundamental similarity of principle, an observer would have noticed then, and will notice to-day, that the institutions of the various countries exhibit only a very broad general likeness; closer inspection shows many striking points of difference. In later pages points of difference will be emphasized, and attempts will be made to draw any instructive inferences and deductions. Meanwhile, we may consider briefly the broad reasons for the difference and the likeness between systems of government.

III

1. Towards the end of the eighteenth century, the Age of Reason, even Kings and Queens took an interest in philosophers. Catherine of Russia, for example, questioned a French physiocrat, Mercier de la Rivière, on the best basis for the good government of a State.[2] His answer was, 'There is only one base, Madam: the nature of things and of men.' So it will be found that, after allowing for the 'accidents' of history and geography, an important reason for differences in institutions in different countries otherwise accepting fundamentals is the *characteristics of race.* People in different countries are of different psychological build: the elements of

[1] Carlyle, *Letters and Speeches.* Speech III, to the First Protectorate Parliament.

[2] Cf. Morley, *Rousseau,* vol. ii, p. 157.

hatred and love, of the dispositions to give or take the lead in various enterprises,[1] and very importantly the instinct to co-operate, closely related to the latter, vary broadly with different nations, and this is a primary cause of difference in the way institutions are worked and the temper in which they are created. It is important to realize this, firstly, because one basis of a better international order lies in a more correct understanding of variations in race pyschology, and, more to our immediate purpose, theory based upon the political experience of one country may be applicable only after serious modification to any other country. Once there were people who spoke rashly of the experience of Second Chambers in other countries when they wished to reform the English House of Lords,[2] once people recommended the introduction of Direct Legislation[3] (referendum and the initiative), and once, too, men and women, looking for a way out from what they conceived to be a sorry society, urged the immediate introduction of a Soviet system of government in every country on earth after the Russian model.

An outstanding example of the influence of racial characteristics is the parliamentary system in France. In France, as will be shown at greater length later, there are a dozen or more small parties, loose, volcanic, vehement, and undisciplined, shifting into office and out again quickly, and each ever ready to take up arms against any or all of the other eleven. In England, until war produced chaos, there were two great parties, with another, the Labour Party, rapidly growing to strength and independence. Why twelve in France and only three in England? To my mind, and to the mind of other observers, because the French are of a fiercer, less meek, nature than the English. They are of marked individuality, set more store by eloquent speech and gesture, and have a passion for ideal justice as the basis of policy. With them 'no compromise'[4] on fundamentals results

[1] Cf. Wallas, *Great Society*, Part I.
[2] See Chapter on France.
[3] See Chapter on Germany.
[4] Cf. Léon Jacques, *Les Partis Politiques sous la Troisième République.*

in disintegration. Englishmen are more open to follow a leader, and compromise as long as the machine will work. The metaphysics of politics concern them little. A member of the French Chamber of Deputies has more ambition to 'get on,' on the average, than has the ordinary English, German, or American member of the representative assembly.[1]

Again, the Socialist movement in Germany, as it expressed itself in actual social legislation, in municipal enterprise, and in the wonderfully organized Social Democratic Party[2] and Civil Service, was the result of an innate disposition to take a share in the common enterprise, which was at work as far back as the Middle Ages.[3] '*Wir sind organisiert und organisierbar*,' said Friedrich Naumann at the outbreak of the war.

Lastly, the sturdy early nineteenth century individualism of 'one hundred per cent. full-blooded' Americans,[4] whether racially inherited or acquired (for, in considering racial characteristics, I am conscious of alteration of the 'biological' by the 'social inheritance'), undoubtedly had an extremely degrading effect (apart from other causes) on the efficiency of their State and Federal Institutions. They cultivated, or were born with, a 'State-blindness,' as H. G. Wells has termed it.[5]

2. The *Circumstance of History* makes differences. Past needs and wishes, which were the good reason for the foundation of particular systems and institutions, vanish or become weakened with different force in different countries, but the institutions still remain.[6] For instance, into a democratic age an out-worn House of Lords drags its weak life along, kept in existence by habit, with

[1] Cf. Jules Roche, *Quand serons-nous en République?* p. 140–1: 'The question is sometimes asked, "Why is the Parliamentary system not worked here as in England?" I reply completely with a simple question, "Why would one fail if one wished to cultivate coffee and vanilla in the glaciers of Spitzbergen?"'

[2] Cf. Bülow, *Imperial Germany*, especially chapters xi–xvi.

[3] Cf. Dawson, *Municipal Life in Germany*, and *Evolution of Modern Germany*.

[4] Croly, *The Promise of American Life*, and Ostrogorski, *Democracy and Political Parties*, vol. ii.

[5] *The Future of America*, p. 209 et seq.

[6] Cole, *Social Theory*, chapters ii and iii.

attention diverted from it to some extent by a European War and the Government's inability to spare the time to touch a vital constitutional problem.[1] The American Senate is strengthened, as against the House of Representatives, because its organization is apter to modern problems, though original intention assigned to it a secondary place. The President of the U.S.A. is actually the elect of the people, and the few men who sit in an hotel (kept cool and quiet with difficulty in some great Convention city in the height of summer) making mine and countermine for some 'favourite son.' The College of Electors, the only thing the Philadelphia Convention *did* 'strike off at a given moment' to elect the President, is a mere form. The pressure of circumstances disembowelled it. Then the British Cabinet, the creature of political usage and not of legislation, underwent such an alteration in its essential character through the force of the war-mind of statesmen that it will take a long time to recover. Its Continental imitations will therefore differ from it.[2]

Switzerland, owing to the chance of history and geography, with no sea-board, a frontier of mountains, no great extent, a small territory composed of smaller territories historically older, exhibits that type of Democracy called *Direct*; it makes use of the Referendum, the final decision of the people by direct vote on occasion, and, also, the direct popular *Initiative*. This country, too, is an example of the need for different institutions in States with different industrial and agricultural populations, pursuits, and problems.[3]

Again, there is *the influence of dominant personalities*, an important matter in democracies no less than in autocracies. Such were, for instance, Napoleon and Bismarck in Europe, who made a State to fit a theory or a whim; Alexander Hamilton, Madison, Washington, Lincoln, and Wilson in America, who were not bound

[1] Debate in the House of Lords, Hansard, vol. xliv, No. 17, March 21, 1921.

[2] War Cabinet Reports, 1917 and 1918; House of Lords, Hansard, 5th series, vol. xxx, cols. 239–87; Commons, vol. lxxxviii, col. 1342 et seq.

[3] Cf. Bonjour, *Real Democracy in Operation.*

by habit or precedent; Walpole, Pitt, Peel, Disraeli, Gladstone, and Mr. Lloyd George in England. The theories and ambitions of such men, made in adventurous and ardently lived lives, have wielded systems in different senses.

3. A fruitful source of difference in institutions has been the imitation of England by America. The imitators took a somewhat mistaken view of the essence of English central government at the time, and other Republics have since copied the American system. The structure of American Government was based upon a theory of English Government at an exceptional period of English political history. The Cabinet system, the centre of English political institutions, and England's greatest contribution to the art of government, in its first stages in the reign of George III, was, for a time, broken by that Sovereign's action. On a foreign interpretation of the constitution [1] revolutionary America built, seeking to avoid the English mistake of letting the King meddle with legislation. Then many States copied the American system, with attempted 'separation of powers,'[2] legislative, executive, and judicial. With the same fundamental basis of English political philosophy—both would call themselves 'free nations'—American and English government now exhibit the widest and most interesting differences. In England there was, instead of the 'separation' and later 'confusion of powers,' as in America, a slow development of a system of government responsible in the first place to the House of Commons and then to the country, with co-ordinated and non-conflicting parts. This latter held good before the war. Now it is an ideal or a legend. From this original difference between the American system of a non-parliamentary President and the English system of a parliamentary Prime Minister, other differences branched; the party system meant something different in each country, the Civil Service was for long made vicious in America, and the financial administration

[1] Cf. Montesquieu, *Esprit des Lois*, Book XI; and the great English lawyer, Blackstone's, theory, in *Commentaries*, Book I, chapters ii and iii.

[2] These points are further considered in the chapter on America.

of the United States is still inadequate to the needs of a modern country.[1]

4. Lastly, there is the constant working out of new theories of government, and experiment. This is illustrated by events in Russia[2] and Germany[3] in the last three years, and by new theories of the State induced from the facts of modern society. The old idea of a sovereign, regalian Government at the centre, with all the strings in its hands, untouchable and unteachable, is vanishing beneath the natural needs of the Great Society. Parliamentary democracy is being complemented by theories and hard facts of organizations of producers; the old territorial constituency is criticized, special representation is given to consumers and producers in virtue of their interests, and the cause of a new decentralization and federalism is finding eager propounders.[4]

Altogether, statesmen in various countries found no one golden rule for making institutions; they were obliged to build their system by 'combining, applying, and excepting, according to time, place, and circumstance.' And, as no one golden rule could be found for making institutions in different countries, so, in interpreting them and using them as models, due regard must be paid to causes of difference.

IV

Institutions the whole world over are alike, *mainly through imitation*. Other countries have copied most often from England. 'Parliamentarism,' the sovereign parliament, and the Cabinet system—as they developed in England until the nineteenth century largely unconsciously, and then by plans laid consciously to achieve a purpose—have profoundly influenced the rest of the world. France, Belgium, Italy, some of the Balkan

[1] These points are further considered in the chapter on America.
[2] See *Constitution of the Russian Socialist Federal Republic.*
[3] Cf. *New Constitution.* (Purchaseable at H.M. Stationery Office.)
[4] Cf. Laski, *Authority in the Modern State*; Duguit, op. cit.; G. D. H. Cole, *Social Theory, Guild Socialism Restated, Self-government in Industry.*

States, Germany, the Nations of the Empire,[1] and Scandinavia, have now Cabinet Government, a Parliamentary Executive.[2] The United States, which suffers from considerable dislocation in its Federal Government owing to the legacy of the 'separation of powers,' has shown within the last few years, through its more enlightened statesmen and publicists, a desire for a closer approximation to a Cabinet responsible, as their Cabinet is not now responsible, to the elected representative Assembly, Congress.[3] In August 1919, as the culmination of something over a century of striving, especially in the years of constitution-making, 1848, 1867, and 1871, German liberal politicians achieved responsible government, with a Cabinet system as its pivot.[4]

The finest example of imitation is that of pre-war Germany by Japan. 'In March 1882, Ito and his suite were despatched to Europe to study the political institutions of the West with a view to preparing a Constitution for Japan.'[5]

"Ito had remained abroad for about eighteen months for the investigation of political institutions in the West. His longest sojourn was in Germany. It was said that, while he was there, he became a great admirer of Prince Bismarck, and attentively studied the administrative methods of that eminent statesman and the Prussian bureaucracy."[6] The new regime from 1889 embodied much that was German—the Minister President, the Civil Service, non-responsible government, army, educational system, medical service, public sanitation.[7]

Secondly, institutions gain their essential likeness in different countries from the similar influence of similar

[1] In theory still 'Dominions,' but since the events of the war and the speeches of responsible statesmen for the last decade, actually Nations. Cf. Duncan Hall, *The British Commonwealth of Nations*, and A. B. Keith, *Select Speeches and Documents on British Colonial Policy*, vol. ii.

[2] Cf. Pollard, *Evolution of Parliament*, p. 3.

[3] Cf. Wilson, *Congressional Government* and *Constitutional Government*; *New Republic*, January 7, 1920, and *passim*; Taft, *The Supreme Magistrate and his Powers*.

[4] Cf. Stier-Somlo, *Die Reichsverfassung*.

[5] Cf. Uryehara, *The Political Development of Japan*, 1867–1909, p. 87.

[6] Ibid., p. 100; cf. also, McGovern, *Modern Japan*, p. 67.

[7] McGovern, p. 57.

ideas. The Declaration of Independence and the Declaration of Rights, the American Revolution and the French Revolution, proved powerful calls, summarizing as they did the philosophy of a century. Natural rights, the passionate expression of a desire in men for certain guarantees of liberty, equality, property, and sovereignty of the people, resounded the world over; the principles of '89 and '93 impelled men to Parliaments. And again, the new theories of industrial and economic democracy are already bearing fruit—Whitley Councils, Works' Councils, Soviets, represent new and more creative ideas of the common man's place in a complex world.

The following chapters show something of the political side of this complex world.

CHAPTER II

FRANCE: THE CONSTITUTION, THE PRESIDENT, AND THE SENATE

I

MODERN French governmental institutions spring primarily from two sources: first, the social democratic organization created by revolutionary thought, the Republican ideal, and the English parliamentary model; and, second, the centralized administrative organization left by Napoleon,[1] though its regalian spirit was a product of the *ancien régime* and the essence of Roman political and legal thought.[2] These two sources are different in nature, for the republican sentiment sets out to allow scope for individual self-expression and popular control, while the centralized bureaucratic administration tends steadily to deal with the inhabitants of the country, evading political direction as far as is possible in the central departments, as if those inhabitants were lifeless

[1] Cf. Seignobos, *A Political History of Contemporary Europe*, p. 221 et seq. Note: Bentham's *Political Tactics* was sent to Morellet and profoundly influenced the procedure in the National Assembly. Cf. Leslie Stephen, *English Utilitarians*, vol. ii, p. 321.

[2] Cf. Duguit, op. cit., Author's Introduction. Also Taine, *Modern Régime*, Book II, and Tocqueville, *Ancien Régime*.

puppets, uniform in shape, size, character, and desire.[1] Even now there is not that happy working relation between the Minister and the Departmental Secretary which exists in England, and this has resulted in serious maladministration.

Discussion of French government can, then, fall into two parts: (*a*) the working of the Republican institutions; (*b*) the Civil Service.

The present constitutional system dates from the years 1871 and 1875, the latter year being that in which the constitutional machinery was set out in documents. France thus differs from England in having a written constitution; and in this class with France are Belgium, America, Switzerland, Germany, Italy, and most other States.[2]

By contrast with England, in France we can point to definite documents containing the constitutional laws, and we find there, too, special provisions for the amendment of such laws. A distinction is made, therefore, between the ordinary laws and the fundamental laws. In France it is more difficult to alter a constitutional law than it is to alter an ordinary law; it needs the assent of a majority of both Houses met in National Assembly. Similarly, most other countries have constitutions of a greater *rigidity* than that of England; England's constitution is of greater flexibility.[3] Constitutions all over the world, partly the result of written stipulation, partly of convention, form a series of increasing rigidity or decreasing flexibility, in so far as their makers have sought to render amendment difficult or easy. The importance of such rules of amendment lies in the facts: (*a*) that it is of vital importance to modern communities to make easy the abolition of old, useless institutions and the creation of new institutions in accordance with the movement of social purpose; and (*b*) it is, on the other hand, dangerous that the rights guaranteed as the basis of State life shall be alterable by temporary

[1] Chardon, *Le Pouvoir Administratif*, p. 42, and see, for comparison, Beveridge, *The Public Service in Peace and War*.

[2] Cf. Woodrow Wilson's *The State*.

[3] Bryce, *Studies in History and Jurisprudence*, vol. ii, Essay III; Dicey, *Law of Constitution*, Appendix, note 1.

majorities.[1] A peer of the United Kingdom, for instance, recently said: 'Here alone can the fundamental basis of society or the whole of our Constitution be changed by the same process as is applied to the passage of a Drainage Act.'[2]

The present French Constitution is the eleventh since 1789. In it the usual 'declaration of rights,' expressing the makers' political philosophy, was left out, so that it contains only the rules strictly necessary to fix the organization and working of the executive and legislative powers. It is fragmentary, the result of three separate laws passed in 1875. These characteristics have given rise to much discontent on the part of those people who like neat, logical documents permeated with abstract political philosophy.[3] They are the result of the fact that the Assembly elected in 1871 had a large majority of Monarchists, who, after losing their royal candidate, the Comte de Chambord, accepted the Republic only after much pressure, and concessions from the Republicans.[4] The Republic was accepted in principle by one vote, and that disputed, out of some 700. The Constitution was the result of a bargain, and was therefore neither completely Republican nor completely Monarchist: each side hoped to attain its full desire when times were more propitious. The Republic has consolidated itself: in 1884 a constitutional amendment said that the Republican form of government was to be immutable. But Royalist sentiment is by no means dead; it has its groups in the Chambers, and its able expression in *L'Action Française*.

II

We may turn to a closer consideration of the institutional content of the Republic. The President is the

[1] Cf. on one side the American process of amendment, and, on the other, the English ease, in altering most fundamental laws.

[2] The Earl of Selborne, *Hansard*, vol. xliv, No. 17, col. 694 (House of Lords).

[3] Cf. especially Jules Roche, former Minister, *Quand serons-nous en République?* and address of President Millerand, *Manchester Guardian Weekly*, September 24, 1920.

[4] Cf. Esmein, *Éléments de Droit Constitutionnel*, sixth edition, p. 602 et seq; Hanotaux, *History of Contemporary France*, vols. i–iii.

chief executive magistrate of the Republic; he is elected for seven years, and is re-eligible, with a salary of 1,200,000 francs a year. He is elected by the Chamber of Deputies and the Senate meeting together as a National Assembly at Versailles, and if there are several candidates successive ballotings take place until one candidate obtains an absolute majority. The President's election differs from that of the President of the United States, who is now really elected by direct universal suffrage[1]; and from that of the German President, who is to be elected by direct vote.[2]

In France indirect election was chosen to achieve a rapid and certain result, and to save any *coup d'état* which might result from the appearance of a 'plebiscitic adventurer,' like Napoleon III.[3] This was a Republican victory in 1875. The Presidency is sheltered; it has neither the strength nor independence of the American Presidency.[4]

The President's position is not one of pervasive but imperceptible authority, as is that of the King in England. Like the Crown of England, the President is chief of a Parliamentary State, not Chief of its Government. The laws seem to give him power. He was, for instance, given the right to dissolve the Chamber of Deputies (with the consent of the Senate).[5] But MacMahon, the President who dared use the power in 1877, was forced to resign. Since then, though (and because) the power is a most important one in government accountable to the people, it is by strong convention not to be used. Yet the lack of the power of dissolution accounts for a good deal of the evils of French Parliamentarism. (It would be really exerciseable by the Ministry of the day, as in England.) The power, too, to initiate laws, to execute them, to grant mercy, to appoint officials, to dispose of the armed forces, are in the responsible hands of the *Conseil des Ministres*[6]

[1] Bryce, *American Commonwealth*, vol. ii, chapter v.
[2] Cf. New Constitution, Art. 41; and Meiszner, *Die Reichsverfassung*, p. 61 (Hobbing, Berlin).
[3] Cf. *Plebiscites and Referenda*, p. 44 et seq. Foreign Office Handbooks.
[4] Cf. Chardon, *L'Administration de la France*, p. 78 et seq.
[5] Cf. Law of February 25–8, 1875, Art. 5.
[6] Ibid., Art. 3.

(the Cabinet). They countersign and become responsible to the Chambers.[1] The President's addresses are merely good literature,[2] not important sources of policy and exhortations to the country to support him, as those of the American President so often are. He has more ostensible power,[3] however, than the Crown in England. On the appointment of a Cabinet, the peculiar group system of France, with several men competing for the Premiership and many Deputies for Departments (or 'portfolios'), he can, and does, exercise a wider discretion than the Crown in England, to whom an organized party-system, up to 1914, invariably and unmistakeably pointed out the new Prime Minister. In January 1921 President Millerand had great influence in the Briand Ministry.[4] But the President's choice may be upset by a vote of 'no confidence' when, as the practice is, the new Ministry first presents itself to the Chamber of Deputies. The President attends the meetings of the Council of Ministers (not the ordinary meetings of the Cabinet, concerned with every-day politics) to consider general policy. As a permanent power, in face of fleeting ministries, his advice is often accepted. Personality has a considerable influence on the practice of the President; but, so far, save in foreign policy, the Presidents have been forced to be decorative rather than operative.

In the case of foreign affairs, the constitution places the conduct of negotiations in the hands of the President, who may make his arrangements known to the Chambers only when he thinks fit.[5] His powers, here, approaching in importance those of the American President, are modified by the fact that he works with a Parliamentary Executive; but his long tenure of office renders his views important. Treaties of peace, commerce, and those touching the finances and personal rights of citizens must

[1] Cf. Law of February 25–8, 1875, Art. 6.

[2] Barthélemy, *Le Gouvernement de la France*, pp. 96, 97.

[3] Remember, no one publicly knows *how much* power the Crown in England has. Cf. Esher, *The Influence of King Edward*.

[4] Cf. *Westminster Gazette*, January 17, 1921; *Observer*, January 16, 1921. Also Chardon, op. cit.

[5] Law of July 16–18, Art. 8; cf. Chow, *Le controle parlementaire de la politique Étrangère*, c. 3; and Ponsonby, *Democracy and Diplomacy*.

be ratified by the Chambers; but this leaves *entirely out of account* such serious political arrangements as the Treaty of Berlin, the secret Alliance with Russia, and the secret Anglo-French Agreements. M. Poincaré is said to have acted as his own foreign minister during a great part of his Presidency.[1] Here, as in all matters of government, personality can contrive to squeeze power from constitutional clauses.

M. Millerand accepted the candidature only after making it quite clear that the foreign and domestic policy he outlined would be carried out.[2] Irresponsible, he dominates the Cabinet like a Dictator. But when the Chamber, or a puppet Premier, revolts, he is obliged to sink back into comparative impotence, or resign; he cannot hope for a constitutional amendment for himself.[3]

III

The real Executive is, in fact, parliamentary. As in all parliamentary countries, the tendency of opinion, if not of the law, has made the Chamber of Deputies, the so-called Lower House in a bicameral system, more important, and the Senate, the Upper House, of lesser importance. We may consider the Senate first, and then return to the Lower House, which controls the Ministries.

There were two reasons for the creation of a Senate in 1875[4]; the first was mere tradition, combined with imitation of England, whose parliamentary system was a dominant example of successful operation, at that time in its apogee. The second reason, more important than the first, was the desire of the Monarchist majority to establish a centre of resistance and reaction. The 'one-chamber' Republicans were compelled to give way. In 1884 a constitutional amendment ridded the Senate of the seventy-five life members, and political experience

[1] Cf. *New Europe*, October 14, 1920, p. 11.

[2] *Manchester Guardian Weekly*, September 24, 1920, and *Observer*, January 16, 1921. Art. by Philippe Millet.

[3] I am glad to find these views supported in an article in *New Europe*, October 14, 1920, by Mr. Sisley Huddleston.

[4] Cf. Bodley, *France*, vol. ii, c. 1.

has reconciled the Republicans to the Senate as it is now composed.

Since 1884 the Senate has been based upon indirect election. The 300 members are elected, from two to eight per *Département*, in which the rural districts seem to be more favoured than the towns. The electoral college for each *Département* is composed of: (*a*) the Deputies for that *Département*, (*b*) the members of the Conseil-Général and the Council of the *Arrondissement*, and delegates from the Municipal Councils. The rural districts are predominant in voting power for the Departmental Council. This small electoral college has led in some cases to corruption of the electors by promises of office, money, and less tangible 'attentions'; there is also pressure by the higher local government authorities upon the subordinate authorities. The period of office is nine years; each three years there is an election of one hundred senators. No person is eligible for election unless he is at least forty years old.

The consequences of this mode of composition are that the Senators are out of touch with the electorate; the Senate is composed of old men (the average age is about sixty) whose political ardour has probably given way to a desire for no uncomfortable disturbance of a society to whose characteristics they have become firmly habituated. The position of Senator is so economically desirable (15,000 francs a year and no constant anxiety to make themselves ready for an electoral contest) that many Deputies pass to the Senate, which indeed contains from twenty to thirty ex-Ministers. The Lower House is thus deprived of talent and experience.

The Constitution gives the Senate co-ordinate power with the Deputies in ordinary legislation. Only a free arrangement, under no statutorily-established forms, can overcome the Senate's resistance to a bill sent up by the Deputies. The Senate does not reject immediately, but usually holds up the bills in the Senate Commissions. In the case of important social legislation Frenchmen seem, however, to acquiesce in something more than mere revision by the Senate. There is, in fact, a real danger that *a temporary majority of groups*, holding th

fate of a weak Ministry in its hands, may pass hastily contrived and ill-considered legislation, because the Chamber of Deputies is comparatively excitable. Senatorial resistance is therefore looked upon as a proper instrument of control. The Deputies, knowing this, are induced to mislead their constituents with promises they know the Senate will never allow to be realized. The Deputy loses a most necessary sense of responsibility.

For years the Senate held up the question of a weekly holiday for workers, projects for workers' pensions, pensions for railwaymen in the State service, the income-tax bill, and measures for electoral reform [1]; in August 1920 it rejected the Women's Suffrage Bill. As regards financial measures, the Senate has no limit to its powers, save that introduction must take place in the Chamber of Deputies. No definite principle of action has emerged from the various conflicts on financial bills. Most Frenchmen would say that the Deputies 'have the last word'—secured in late years by tardy presentation of the Budget.

The Senate stands by its claim to power on the ground that it is an elected Chamber, and that restraint of the popular House is necessary. Such restraint may be necessary in France, where most of the Deputies are of a notably mercurial temperament. Whether it is necessary in England depends upon an estimate of the average English M.P.'s temperament and intellect. Difference from the First Chamber in personnel and manner of election has become one of the last hopes of those people who see in a single-chamber system the possibility of a rapid, tyrannical overturn of existing institutions and a swift movement of reform. The Bryce Report on Second Chambers,[2] for instance, advocates, after grave doubts and conscientious reflection, long periods (twelve years) and election in large territorial areas. But the experience of Australia and Canada shows that where party government is in vigorous operation a Second Chamber, whether elected (Australia) or nominated (Canada), is practically

[1] Cf. Barthélemy, op. cit., chapter v.; and *Les Résistances du Senat*, 1913.

[2] Cd. 9038, p. 9 et seq.

superfluous. The Bryce Report noted the difficulty of finding the proper scope of power to be exercised by the new Second Chamber it set out to discover,[1] and arrived at maximum disagreement on the question of its composition.[2] In the long run the problem resolves itself into that of estimating the political psychology and competence of the ordinary member of the Lower House. Governments composed of well-known parties, open to defeat at elections, do not lightly rush into mad legislation.[3]

CHAPTER III

FRANCE : THE CHAMBER OF DEPUTIES : THE CIVIL SERVICE

I

OPINION in France is focussed more on the Chamber of Deputies, for, though the Constitution says that the Ministry is responsible before the 'Chambers,' in practice the Senate has little to do with the rise and fall of Ministries. To be eligible, candidates must be at least twenty-five; and all non-criminal and sane *male* citizens of over twenty-one have the right to vote. The Chamber is now composed of 626 members, compared with 707 in England, something like 600 in Germany, and 435 in the American House of Representatives.

Before 1919 France had small single-member constituencies (*scrutin d'arrondissement*, or *scrutin uninominal*),[4] and the second ballot rule, i.e. in the event of no candidate getting an 'absolute' majority of votes in the first ballot, there should be further ballots at intervals until such was

[1] Cd. 9038, p. 1.
[2] Ibid., p. 5.
[3] On Australia and Canada cf. Keith, *Responsible Government in the Dominions* and *Imperial Unity; New Statesman*, Supplement on 'Second Chambers'; and Temperley, *Senates and Upper Chambers*, 1907 (Cd. 3824).
[4] Cf. Bodley, op. cit., chapters ii. and iii.

obtained. The small constituency and second ballot [1] resulted in too close a connection between candidates and constituency, and there was considerable corruption, bargaining and intrigue. Now *scrutin de liste* [2]—that is, the whole *Département* as constituency, with a list of candidates for it, has been reintroduced (July 1919, and elections November 1919), together with a system of Proportional Representation which, badly conceived, has worked unfairly. The system enables good organization and coalition to crush minorities,[3] if the support of anything over half the voters in a constituency can be obtained. But the electoral system is more just than that in being in England at the present moment.

The Chamber has a four-year period, fixed, regardless of changes of policy and changes of Ministry. So long a fixed period renders the Chamber, perhaps, too careless of the movement of public opinion. One of the problems of modern democracies is to discover a period of office which shall be adequate to good work, yet responsive to changing opinion.

II

We have now to consider how the Chamber is related to the Ministry, which is at once executive and the chief initiator of legislation. In England the machinery of control resolved itself until recently into government by the two-party system, i.e. both inside and outside the House men gave their allegiance and support to one of two great parties, each of which had a separate and distinct political philosophy and programme. Each party represented a unity, capable of being praised or blamed, and taking office. In this way the policy that received the support of the electorate commanded the House of Commons. In France,[4] however, there are no great nation-wide party organizations, save that of the Socialist

[1] Cf. J. Fischer Williams, *The Reform of Electoral Representation*, and J. Humphreys, *Proportional Representation*.

[2] Used before in 1871–5 and 1885–9.

[3] Cf. *Journal of Proportional Representation Society*, Nos. 34 and 35.

[4] Cf. for a fuller treatment my article in *Economica*, January 1921; cf. also Bodley, op. cit., vol. ii, chapter v.

party.[1] 'At election times there existed nothing but ephemeral electoral organizations without any close connection between them.'[2] Largely through their psychological make-up, the French people do not readily follow leaders and become 'good party men' for long periods. The Chamber, therefore, is commanded by small groups, not by big parties. The groups are numerous (eleven in 1914; at least eight in 1920[3]), disconnected, and hostile in principle and detail. There are no great party leaders as in England, and the great party names of Liberal and Conservative, Republican and Democrat, or the all-inclusive Government and Opposition, are not the well-known labels of political difference. The groups are denominated by their position in the semicircle of seats facing the Tribune from which the members speak, from Extreme Left (extreme Radical and Socialist) to Left, Left Centre, Centre, Right Centre, Right and Extreme Right (Monarchist and strongly conservative), and by hyphenated labels they attach to themselves, e.g. 'l'action républicaine et sociale,' 'le groupe républicain-socialiste.'[4] There is thus a certain confusion in French parliamentary life, and we have seen in England in the last few years how confusion of parties disconnects people and Executive. This lack of clear organization of parties in a democracy with a Parliamentary Executive means that the mass of the people, preoccupied with getting a living, ill-informed on many things, and therefore constrained to put trust in its elected governors for periods of years (in England five, excepting previous dissolution), is without that 'something which can be loved and trusted, and which can be recognized at successive elections as being the same thing that was loved and trusted before.'[5] The organization and the labels in France are fleeting. The demarcations of opinion within

[1] Cf. *International Review*, September 1919; Professor Aug. Hamon on *Political Conditions in France*, and the same author's *Der Sozialismus in Frankreich* (Vienna).

[2] Cf. Jacques, *Les Partis Politiques sous la IIIme République*, p. 29. Paris, 1912.

[3] Cf. *Le Temps*, December 30, 1920. Some of these groups were fragile coalitions.

[4] Cf. *Les Groupes*, 1914—list published by Roustan, Paris.

[5] Cf. Graham Wallas, *Human Nature in Politics*, p. 83 et seq.

the Chamber of Deputies are not clearly drawn from opinion in the country.[1] Government is carried on by men united in a Ministry made by extremely private bargaining, and so it is comprehensible why personal considerations play a great part in the composition of Cabinets.

The elections of 1919 were fought on something like a big two-party system, not because the French wished to discard a system recognized as vicious, but because the ordinary *bourgeois* Republicans (a good many as radical as English Tories) united to combat the Socialists and true Radicals. Taking advantage, it is said, of the loopholes of the present system of Proportional Representation, the anti-Socialist 'National' *bloc* won a great victory. The Socialists gained only 68 seats out of 626. Outside the groups were 'seven wild men,' '*des sauvages*,' among whom was the Prime Minister, destined soon after to be President of France. This isolation is in itself a typical illustration of French group life—the Prime Minister belonged to no party; a normal situation.

How does all this affect control of the Ministry? The Ministry is responsible to the Chamber, i.e. it must have a majority. A Ministry is therefore obliged to concentrate the power of several groups—to become a '*Cabinet de Concentration*.' The Ministry thus becomes bound hand and foot to the demands of the component groups, for *it has not that most necessary retaliatory weapon, the threat of dissolution*. Every vote is important, therefore a lively traffic in official jobs and favours is carried on.[2] This means weak government and slack administration. Again, since the members of the groups are bound largely by personal considerations, and the groups are free to desert the Ministries and even to break up their own unity,[3] Cabinets are very short-lived—some Ministries have lasted a day; others about two years: the average is something

[1] Cf. Jacques, op. cit., p. 33. This incoherence of party division has much to do with the confusion of English politics since 1918, when old party unity was broken.

[2] Cf. Jules Roche, op. cit., p. 156; and Millerand, Chamber of Deputies, January 22, 1920.

[3] Cf. the illuminating example, given in *Le Temps*, December 30, 1920, of the disunion of groups — 'Les partis et leur programme.'

like ten months in office per Cabinet. In forty-seven years, from 1871 to 1918, there were sixty-eight Ministries. There is a 'waltz of portfolios' from Minister to Minister, and groups are specially formed because Deputies will not join groups already containing a large number of potential Ministers and Prime Ministers. Legislation is therefore scanty, many reforms are untouched, and the Administration is left largely to itself.[1] The whole system is essentially undemocratic, for, though the people elect the men, they do not elect them to form the peculiar combinations of groups for control of a Government. Thus, the French people, who are intensely jealous of arbitrary power, have no real control over the central machine through party organization, and have to look to two other means of control, the Parliamentary Commissions and the Interpellation.

The Parliamentary Commissions, numbering sixteen, to correspond with the most important spheres of administration and legislation, are now composed of members chosen by each group in proportion to its size. Each Commission is led by a Reporter (*rapporteur*) chosen by the members of the Commission. No Bill goes through the Deputies and the Senate without being first examined and reported upon by the appropriate Commission, which has expert witnesses, and may call for the testimony of Ministers, civil servants, and official documents. The *rapporteur* has available a judicial staff for drafting, and submits a report containing the results of a usually impartial investigation. In the House the Commission forms a block of informed debaters, and, with the *rapporteur*—who, in authority, is sometimes more than a close second to the Minister in charge of the Bill—prove themselves either redoubtable allies, or fierce enemies, of the Government. Most important of Commissions is that of the Budget, which considers, among other things, the question of possible economies.[2] In contrast to the

[1] Bryce, *Modern Democracies*, vol. i, p. 296. I, however, respectfully dissent from his characterization of 'the bureaucracy' in the passage referred to as 'competent.'

[2] Cf. proposal of Select Committee on National Expenditure, Report 9 (Session 1918), and Committee just established—*Times*, May 11 1921.

English Grand Committees, the French Commissions report on questions of policy, not merely of detail. They differ from the American Congressional Committees because these are not set to control the Executive's legislative proposals. They can control the Executive because they are informed on the action of the Departments and become potent instruments of criticism. With experience they become specialists to some extent, and endeavour to direct the Departments. To sum up, the Commissions are very important to a country which, traditionally afraid of an executive body controlling a strongly centralized administration, finds proper control in open Parliament ineffective.[1] Republicans in France consider them essential; members of the Right consider them too interfering with ministerial freedom.[2] Suggestions for the creation of such Commissions in England have recently been made.[3]

The Interpellation is a kind of question not used so much to get information as to put the Government on its defence, for a particular act of a Minister, or for its general policy. Only on foreign affairs can an Interpellation be altogether refused. The Interpellation opens a debate, which is closed by a division and the expression of a definite opinion. If 'a resolution of the order of the day *pure and simple*,' is passed, the Government still lives; if the resolution is '*motived*,' that is, expresses a judgement on the Government, and that judgement is of 'no confidence,' the Government resigns. This is a common way of defeating a Government, and gives the individual Deputy tremendous power. Three out of every five Ministries have fallen after an Interpellation; it is during the debate, usually at an exciting juncture in political affairs, that the loyalty of groups is withdrawn.[4] The Interpellation is an instrument of destruction, and therefore of stringent control; yet, as things are, this is

[1] Cf. *New Europe*, August 1, 1915, p. 56. Article by Étienne Fournol.
[2] Cf. Bryce, *Modern Democracies*, vol. i, p. 297.
[3] Cf., especially, *Report of Machinery of Government Committee*, p. 15 et seq., cd. 9230; cf., too, Mr. Lloyd Geroge, *Hansard*, December 19, 1916, cd. 1343 et seq.
[4] Cf. Zola's *Paris*, Book III, chapter v, for a fine account of an interpellation scene in the Chamber.

necessary, for the power of the Ministry in France, at the head of a powerful centralized administration, to oppress the individual citizen is very great. A good many Interpellations are, of course, frivolous; complaints are made of the atmosphere of excitement in which the debate takes place, and the large proportion of sessions devoted to Interpellations.[1]

Control of the Executive is much stricter in France than in England, and France suffers from not having a convention of dissolution and appeal to the country: such a convention would tend to the organization of bigger parties, which would gradually cultivate a new sense of responsibility to the people.

III

The central Departments comprise now the Ministries of Foreign Affairs, Justice, Interior, War, Marine, Finance, Public Instruction, Agriculture, Commerce, Public Works, Colonies, Labour and Public Relief, Pensions, Public Health, and Liberated Regions, the last four being products of the war years. Each is supposed to be under the guidance of the 'amateur' political Minister, who is responsible to Parliament for the administration, and takes a part in the general responsibility of the Cabinet. The authority of the Departments extends all over the country, owing to the centralization of power in the hands of a Civil Service, whose origin dates from Richelieu and Louis XIV, and to the fact that there is little local *self*-government, but only localized ('deconcentrated') administration by agents of the central Government. After the chaos produced by the first optimism of the Revolution, Napoleon reinforced the power of the central Administration, so that it has been said that each Minister is now one-twelfth of an Emperor. Though the proportion of civil servants to the population of France is the highest in the world—something like 1,000,000 in about 40,000,000[2]—the conditions of recruitment, promotion,

[1] Cf., for an analysis of interpellations, *Le Temps*, April 5, 1920.

[2] Cf. Lefas, *L'État et les fonctionnaires*, p. 38; also Cahen, *Les Fonctionnaires*.

and discipline are fifty years behind those of Great Britain, and twenty-five years behind those of the United States; they can hardly be compared with those of Germany. From 1844 constant attempts have been made to secure a general status for officials, but all that has been attained is a slight modification of the arbitrary appointment, and dismissal, first exercised by King and Emperor and then by the Ministers. In the matter of recruitment, a law of 1882 left the Ministers power to set out conditions by 'rules of public administration'; since then a flood of such rules, arbitrary and often changed, set out for each Department the courses of study, the technical diplomas, and less frequently the competitive examinations which are the necessary preliminaries to appointment. There are no common regulations and governing body like the English Civil Service Commission which originated in 1853. There is a traffic of places and promotions between the Minister and interested Deputies who have votes to offer (this is a cause of the general disrepute of the Chamber); promotion is therefore a matter of luck and seniority, sometimes of ability. 'We pretend to be apostles of justice and law, and we erect favour and intrigue as a system of government.'[1] Dismissals are virtually in the hands of the higher official in the hierarchy, so that discipline is strict and initiative a dangerous quality.[2] The result of these conditions on the officials is, as an employé of 1840 said, 'discouragement, demoralization, and disgust.' Authority is too overshadowing, reward too uncertain, scope for free action and zest in taking responsibility too limited for the Civil Service, which means so much to France, because its ramifications are so wide, to give good service. When Lord Bryce calls it 'a strong and competent bureaucracy' he is right only as to its strength, because tradition and corrupt politicians have left it imperial, though the form of government is republican. It is decidedly not competent.

During the course of the nineteenth century successive generations of civil servants rebelled against their servitude, and their constant struggles, combined with extrava-

[1] Cf. Demartial, *Le Statut des fonctionnaires*, an important work.
[2] Cf. Lefas, op. cit., p. 65 et seq.

gance of the Government, and inefficiency, resulted in several small reforms. Ministers were compelled to stand by the rules in existence relating to appointment, promotion, and dismissal; protest in the administrative court against appointment of unqualified persons is possible; a civil servant must be informed of the grounds of his dismissal; promotions are made from lists called '*tableaux d'avancement*,' drawn up by '*conseils d'administration*,' composed of representatives of the hierarchy and the civil servants' delegates—of course, the high official view has major representation; mixed '*conseils de discipline*' give the officials an opportunity to put their case, and to hear the evidence for entries on their secret individual *dossiers*.[1] But, though the *Conseil d'État*, the supreme administrative court, has in the last twenty years shown a steadfast regard for the claims of the official against arbitrary action by the superior Cæsars of the services, central and local, the whole situation is still confused and inimical to the official. The Law on Associations of 1901 stimulated the formation of officials' associations, and their collective action forced their grievances on the attention of the Government. In the strong flow of the syndicalist movement many desire to become autonomous syndicates, freely amending and executing the general directions of the politicians.[2] But the majority of the politicians still consider that Parliament is, or ought to be, sovereign, and that public servants who strike are 'mutineers'; bloody repression of such strikes in 1906 and 1910, wholesale dismissals and harsh treatment, still give substance to this sterile theory of sovereignty, against the more fruitful theory of economic and social federation put forward by thinkers like Paul Boucour, Cahen, Duguit, and Leroy.[3] The Departments are assisted, at their will, by Consultative Councils composed of official and outside experts—e.g. Superior Council of Public Jurisdiction, Superior Council of Commerce and Industry. This has not been carried far in England, but the Ministry of

[1] Cf. Fribolin, *Die Frage der Deutschen Beamten*; and cf. Lefas, op. cit., p. 78 et seq.

[2] Lefas, op. cit., p. 146 et seq.; and Demartial, op. cit.

[3] Cf. especially Laski, *Authority in the Modern State*, chapter v.

Agriculture Act, 1918, and the Ministry of Health Act, 1919, provide for such consultative councils to give representatives of the producers and experts an opportunity of influencing the counsels of the Ministry.

Lastly, the *Conseil d'État* stands at the head of the centralized system; gives sanction to certain of the executive *decrêts* which are and have always been so largely used to add the details of laws passed by the Chambers [1]; and, as final court for that branch of law, *droit administratif*,[2] by which the citizen on the Continent can appeal against the State for acts done by its officials, in their capacity as officials, and through which officials themselves are judged in their mutual relations.[3]

Altogether, France has made many attempts to secure liberty, and has frequently expressed its splendid aspirations in well-phrased declarations: yet her institutions do not realize them. It is more important for democracy to organize itself than fervently to declare its faith.

CHAPTER IV

GERMANY: THE NEW SYSTEM

A STUDY of German Government falls naturally into two broad divisions: first, a brief analysis of the institutions prior to the abdication of Emperor William II and the break-up of the old Empire [4]; second, a commentary on the structure of the Constitution of August 11, 1919. The true extent of the change since the war cannot be understood without considering pre-1919 institutions.

I

Analysing German government before the war, we notice three remarkable features: the Federal character

[1] Cf. Chardon, op. cit., p. 99 et seq.

[2] Cf. Dicey, *Law of the Constitution*; and Ashley, *Local and Central Government*.

[3] Cf. Chardon, op. cit.

[4] Cf. Lowell, *Governments and Parties in Continental Europe*; and Barthélemy, *Les Institutions politiques de l'Allemagne contemporaine*. Paris, 1915.

of the State, the nature of irresponsible political power, and the peculiar characteristics of the Civil Service.

Between the government of France and that of Germany there was one immediately striking difference: France was a *unitary State*, in which governmental power was wielded over the whole territory and for all inhabitants by one sovereign legislature. Any legal power used could be ultimately traced back to the recognized authority of the one central Government in Paris. But Germany was, before the Revolution, and is now, a *federal State*—that is to say, it was and is composed of various States each possessing sovereign rights in the exercise of certain powers, while for the whole territory composed of these States another, a federal, government exercised independent authority with respect to certain other powers.[1] There was a distribution of powers, and a number of parliaments and governments in several local centres. In this respect only, Germany has essentially the same type of government as Switzerland, America, Canada, and Australia. The root idea underlying such an arrangement is the possibility of uniting in harmony local *autonomy*, with the advantages of a near-by centre of allegiance, the preservation of local culture, and scope for experiment on a small scale; and *centralization*, with the advantages of economy and efficiency, uniformity where that is desirable, the cure of parochialism, the benefit of wide experience, and a larger entity for patriotism.

Prussia, through the historical circumstances of the movement for union, became dominant, and the big Southern States received special 'reserved' rights in military, postal, and railway administration.[2]

Preponderance, unusual in a federation, was given to Prussia, whose Kings became German Emperors, whose representation in the Federal Council, the *Bundesrat*, the centre of political authority, was so great that she could always stop amendments and nearly always secure the passage of her own projects.[3] The executive power in the

[1] Cf. Bryce, *Studies in History and Jurisprudence*, vol. ii, Essay IV, and Dicey, *Law of the Constitution* (ed. 8), Introduction, lxiii et seq.

[2] Cf. Dawson, *The German Empire*, 1867–1914, and A. W. Ward, *Germany*, 1815–1890, 3 vols.

[3] Cf. Howard, *The German Empire*.

Empire was in the hands of the Emperor and the Imperial Chancellor appointed by and responsible to him; Prussia could veto any proposals for navy, customs, and excise reforms. Foreign policy was, too, in the hands of Prussia through her King, who was German Emperor. Thus empowered, and with about three-fifths of the population of the Empire, Prussia made the Empire its larger self, quite contrary to the intent of a true Federation.[1]

As for political power, in spite of a Reichstag elected by universal male suffrage, theory and practice reserved it to the Emperor, the Imperial Chancellor, his Ministers, and the delegates of the State Governments met in the *Bundesrat*. Thus, the makers of policy were not responsible to Parliament or the people.[2]

A strong, hard, efficient bureaucracy, to be described later, was the powerful tool of the governors responsible only to the Lord and their consciences.

From about 1898, with the growing self-consciousness of the industrial townsmen and the clearer spectacle of 'personal' Government by the Emperor William II, the Reichstag became more challenging; discussion of parliamentary systems and translations of English and American political literature aroused keen interest; there was sullen and chronic resentment at repressions of riots and at the military spirit in the period 1910–14[3]; the old system was already doomed. A Socialist leader in the Reichstag advised the Emperor to ask Heaven, not the tax-payers, for the payment of his civil list. The war years showed the essential weakness of irresponsible government in modern societies, and warnings and criticism came from all quarters.[4] Discipline could no longer restrain vibrant life and will within the old moulds.[5]

[1] Cf. Grant Robertson, *Bismarck*, especially chapter vi.
[2] Cf. Bülow, *Imperial Germany*, 1916.
[3] Cf. H. Moysset, *L'Esprit public en Allemagne vingt ans après Bismarck*.
[4] Cf. notes interchanged between President Wilson and the German Government, October 1918, Foreign Office Handbook, No. 161, App. 4, p. 97.
[5] Cf. Lichnowsky, *Round Table*, No. 28, pp. 691–2.

II

By the end of 1918 the corner-stone of the old union, and the constant guardian of the monarchical system, Prussia, was broken.[1] The prestige of the Emperor was lost at his abdication in November of that year, and the ruling Junker class was temporarily deprived of its governing powers. The immediate result of the downfall was a return to the old 'fragmentation'; the Federation was momentarily disintegrated; the most powerful politic body, the *Bundesrat*, lost its governing power because the governments which had sent representatives to it were all fallen.[2] No one, save a few short-sighted Conservatives, imagined that the old institutions would be worked any longer. At the same time there was a swift movement towards democracy[3]: not merely the old political democracy, but such a form of government as would give more effective control by the workers over the everyday conditions of their toil and livelihood. Republics were created in the States; in many, attempts were made by violence as well as by moral suasion to set up Workers' Councils as final governing authorities.[4] But after the first flush of action the more moderate elements defeated this 'Spartacist' movement, and finally the central Council and Congress of Councils, which had been formed in Berlin and had claimed power to direct the actions of the Provisional Government, established when the old regime fell on November 9, 1918, gave their support to the Provisional Government, made up of the leaders of the old German parties of the Left, Majority Socialists, Democrats, and Centre Party.[5] The condition was that the *Council* system (*Soviet* system) should be embodied *in* the coming Constitution, not remain a power outside. From November 1918 to January 1919 the

[1] Cf. *Enemy Press Supplement* over this period, October-December 1918.

[2] Cf. Stier-Somlo, *Verfassungsurkunde der Vereinigten Staaten von Deutschland*, p. 69 et seq.

[3] Cf. Matthaei, *Germany in Revolution.*

[4] Cf. Young, *The New Germany.*

[5] Cf. Stier-Somlo, *Die Reichsverfassung*, p. 8 et seq., and Heilfron, *Die Deutsche Nationalversammlung*, vol. i, p. 103 et seq.

Government worked out a project for a new Constitution, which should adequately sum up the new direction of German life. Immense interest was taken in the new regime, and every week in the Press, in pamphlets and in book form, there appeared almost countless projects and discussions of constitutions.

Three factors predetermined the nature of the new system of government. The first was the world-wide irresistible movement of the proletariat towards a new economic synthesis. The second was the actual development of the powers of the Federal Government since 1871. The third was post-war needs and obligations.

Consider the nature of the new Federation. From 1871 there had been a pronounced tendency towards the assumption of more spheres of power by the Federal authority.[1] It was in keeping with the age. In the matter of law, trade and industry, railways, banking and insurance, health administration, the rights of the Press and of associations, the social and industrial schemes of Bismarck, the Federal authority augmented its power. They were essentially matters for promptitude, security, certainty, uniformity, and cheapness of service. Add to this the fact that the war had left Germany economically broken, so that only strict and efficient management of the whole resources of the realm could hope to meet her obligations, and one can comprehend the centralized character of the new Germany.[2] This leading idea was embodied in a Government project by Dr. Hugo Preusz, Secretary of State.[3] It was too strict in its centralization for the still 'particularist' States who were to be practically merged into the new entity as '*member-States*.' Representatives of the States discussed the project, and the resulting second proposal envisaged a confederation, the States now being designated 'Free States.' Prussia was the steadfast supporter of the Unitary State.

A National Assembly had been meanwhile elected on a fair system of Proportional Representation, with uni-

[1] Cf. S. Triepel, *Die Reichsaufsicht*, 1917.

[2] Cf. Heilfron, op. cit., vol. v, p. 2960 et seq.

[3] *Reichsanzeiger*, January 20, 1919, Hobbing, Berlin. Discussed in Stier-Somlo, op. cit., p. 29 et seq. Also, with collection and discussion of other Constitutions, in Zuchardt, *Moderne Staatsverfassungen*, p. 103.

versal suffrage, and about 34,000,000 people had cast their votes. Most of the work was done at Goethe's Weimar, because Berlin was too revolutionary. The project went to a Commission of twenty-eight on the Constitution. In forty-five sittings the whole project was recast and systematized.[1] Full, earnest discussions on the second and third readings took place, and on July 31, 1919, almost a half-year after the publication of the original project, the final vote was taken.[2] There was a compromise between the Unitary State and a loose Federation. In favour, 262 votes; against, 75. There abstained from voting about one-fourth of all the members, the extreme Right and Left Parties.

The great problem, What to do with Prussia? was answered by fantastic schemes of partition, but these schemes were scattered before Prussian determination to remain united.[3] The whole question had lost a good deal of its importance owing to the radical alteration in the nature of the union.

It was no longer as before 'an eternal union between Princes' for the defence of the Federal territory, but a union between peoples in their states; as in U.S.A., Australia, and Switzerland. There is for the first time a united people, and a Germany. It is the German Imperial *Republic*; Empire, not in the sense of aggressive power, but in the sense of 'Realm' or 'Commonwealth' (*Reich*). The Preamble to the Constitution marks the gulf between the old Germany and the new.

'This Constitution has been framed by the united German people, inspired by the determination to restore and establish their Federation upon a basis of liberty and justice, to be of service to the cause of peace both at home and abroad, and to promote social progress.' No one State occupies the Presidency: the whole people by direct vote elect the President.[4] 'Reserved' rights and special rights to the big Southern States and to Prussia have been taken away. So strong was the idea of

[1] Cf. Meiszner, *Die Reichsverfassung*, p. 15 et seq.
[2] Cf. Debates in Heilfron, op. cit., 9 vols.
[3] Cf. *Political Review of Foreign Press*, November 1919.
[4] Constitutions, Section III.

uniformity and centralization that the Constitution, as in Switzerland and America, stipulates that the form of government in the component States shall be republican.[1] Again, they are ordered to base their electoral system on universal, equal, direct, and secret suffrage, and principles of proportional representation,[1] thus at once cutting at the root of the old Prussian 'three class' indirect system of election, whereby those people who paid more taxes were possessed of greater voting power. Responsible government is also prescribed by the clause—'The State government requires the confidence of the people's representatives.'[2]

This marks a vital difference from pre-1918 conditions, when the majority of the States had no true parliamentary executives. This destruction of the old dynasticism tends to weaken 'particularism' and to make for greater cohesion. This idea is further carried out by allowing States to combine, or divide themselves, by popular consent, and in some cases by Federal order, and form new regions to 'secure the best economic and educational interests of the people.'[3] Few people see the utility of the historic boundaries. The Federation is looked upon as a great institution for serving the interests of the people—'a public service corporation'; and consciously, that has been the fundamental principle used in the new arrangement.[4]

This is shown, too, in the matter of distribution of powers. The Federal authority has a very wide scope of power, and amendment is easier than before, so that it has an easy means of increasing that power. The Federal authority has *exclusive*[5] jurisdiction over certain powers, including posts and telegraphs and Imperial railways. It has *concurrent* jurisdiction[6] (with the States) in another set of powers—comprising justice and social liberty, physical and moral welfare of the citizens, and the

[1] Art. 17.
[2] Ibid.
[3] Art. 18.
[4] Cf. an excellent study by Professor Jacobi (Leipsic), *Einheitsstaat oder Bundesstaat*, 1919.
[5] Art. 6.
[6] Art. 7.

regulation of industry and commerce. Here the Federal law overrides, when necessary, State law. The Commonwealth Government can tax as it wishes for Federal purposes. The Federal authority has *normative* [1] powers in certain other directions, including education, that is, it can lay down what the States shall do as a *minimum*. The whole scope of Federal power is wide, and readers must go to the Constitution for the powers under the heads given. Taken altogether, the Commonwealth has powers which complete the economic unity of Germany (labour, land, industrial undertakings, railways, commerce, banking and finance); it has wide social powers and control of relations with foreign countries. It is almost a unitary State, with a few unimportant powers decentralized, leaving the States to execute the Federal Law (differently from U.S.A.), but keeping a strict supervision, by means of Commissioners, over the State officials.[2] Realization of the need for local life and initiative, of the existence of peculiar cultural characteristics worth fostering, prevented ruthless centralization. Bavaria maintained her traditional dislike of union and a central authority, and this dislike is fostered unfortunately by certain French politicians. Speeches made by leading politicians and associations in that State and in others, however, show that there is an overwhelming body of opinion in favour of the new dispensation.

III

We may now turn to the new political structure. It is declared that sovereignty now proceeds from the people; no longer, as before, from a monarch by the Grace of God.[3] Sovereignty of the people is organized through two instruments: (*a*) the representative assemblies, and (*b*) direct reference of legislative projects to the whole people. The representative assemblies consist of the *Reichstag* [4] (the popular Chamber) and the *Reichsrat* [5] (the Commonwealth Council). The Reichstag is composed

[1] Art. 10.
[2] Arts. 14, 15, and 16.
[3] Art. 1.
[4] Section II.
[5] Section IV.

of deputies elected as representatives of the *whole* people (not of a locality or an industrial interest), and not bound by any mandates and pledges, an impossible thing in practice under modern electoral conditions. All men and women above the age of twenty may vote under a scheme of proportional representation worked out in the law of April 1920.[1] By this law constituencies are arranged to give, conveniently, one seat per 60,000 voters. Party lists are drawn up, and the total votes cast for the party are divided by 60,000, the number of seats per party being thus arrived at. Surplus votes for each party in each constituency are then added together for the whole Commonwealth, the result divided by 60,000, and extra seats given in accordance with the quotient. This, of course, gives a tremendous power to the party organizations and leaves little initiative to the private citizen.

The Reichstag is the centre of governmental power.[2] The Chancellor of the Commonwealth (who corresponds to the British Prime Minister) now requires the confidence of the Reichstag: a thing with which the old Chancellors could dispense.[3] In October 1918, when the nearness of catastrophe was felt, the Kaiser, induced thereto by Prince Max of Baden, who became Chancellor, accepted the principle of responsibility of the Government, and the Chancellor took office only in agreement with the leaders of the Reichstag majority parties. The Chancellor remarked how difficult it was for one man to bear the tremendous responsibility of government in modern societies. The chance of error is, of course, too great. Bismarck himself constantly broke down in health, and in America it is suggested that the one-man executive should give way to a responsible Cabinet. Yet, in face of the crushing responsibility on the Executive to-day, Mr. Hilaire Belloc recently suggested the revival of Monarchy.[4] Cabinet responsibility was therefore introduced into Germany, any Minister being obliged to resign when the confidence of the House is withdrawn by *express*

[1] Cf. *'Das Wahlrecht' Erdmannsdörfer*, 1920, pp. 18–39, and *Proportional Representation*, No. 37.
[2] Cf. Section II.
[3] Cf. Arts. 52–9.
[4] *The House of Commons and Monarchy.*

resolution. This combats the evil of collective responsibility: fear to condemn the policy of a single Minister for the control of his own department lest the whole Cabinet resign. Strangely enough, the Chancellor is held *primarily* responsible for the *general lines of policy*; while each Minister directs his department within the scope of this policy. One German commentator calls this system a *premier-system* in contradistinction to the '*collegiate*,' or Cabinet system as it existed in England before the war, when the Prime Minister was just *primus inter pares*.[1] It is evidently intended to make the Chancellor tower above his colleagues, much as the British Prime Minister does now.

The Reichstag has further control through the right to set up Committees of Inquiry into administration,[2] with power to call for any necessary evidence from the Courts and the Administration. There is a Standing Committee for Foreign Affairs, which may continue its work beyond the session of the Reichstag, and between any two Parliaments.[3] It was designed to contain members who would carefully watch and study the course of foreign affairs and form a body of informed critics, the absence of which is in every country the first cause of lack of democratic control of foreign policy.[4] There is, lastly, a special Standing Committee to supervise administration when the Reichstag is not in session.

The *Reichsrat* is the Federal Council found in all federal systems of government to represent State interests. In America, Switzerland, and Australia the States are equally represented, but in the Reichsrat representation is upon a population basis; each State has one vote for every million inhabitants; each State has at least one vote; any surplus over a round million, if equal at least to the population of the smallest State, counts as a full million. No State, to safeguard Germany from Prussia, may have more than two-fifths of the representation.[5] This

[1] Cf. Stier-Somlo, op. cit., pp. 148–9.
[2] Art. 34.
[3] Art. 35.
[4] Heilfron, op. cit., vol. v, p. 3150 et seq., and Ponsonby, *Democracy and Diplomacy*.
[5] Arts. 60, 61.

inequality is accepted as just, through the force of the old unequal representation in the Bundesrat, based upon the relative strength of the centripetal and centrifugal forces in 1871. Such a question will arise in the event of any Federal Assembly for the British Empire (a most unlikely institution) and in representation of nations in a League.[1]

The Reichsrat [2] has not the political importance of the old Bundesrat. That body contained the political force of the United Princes. The Reichsrat merely co-operates with the more highly empowered House, the Reichstag. A member of the Government, for instance, presides at sessions of the full Reichsrat, and over its committees, and may take part in the debates. The two Houses are thus connected in a manner which no other country exhibits, with the possible exception of Norway, whose Second Chamber is an elected Committee of the First.[3] The Ministry is to keep the Reichsrat informed of the course of administration and policy, and may summon its committees to important deliberations. 'Federal laws are passed by the Reichstag.'[4] There must be preliminary consent of the Reichsrat before the Government introduces a Bill,[5] and if there is disagreement the Government still may introduce its Bill, but must state the divergent views of the Reichsrat. A Reichsrat Bill, repugnant to the Government, must be introduced into the Reichstag, but the Government may state its point of view. The Reichsrat and the Reichstag have therefore preliminary revisionary powers over each other's measures. Beyond this, the Reichsrat has the right to protest against a law *passed* by the Reichstag.[6] It presents its reasons within two weeks after the final division. The Reichstag is obliged to reconsider the Bill, and in the ordinary course of events agreement between the Houses is necessary for

[1] Cf. Wallas, *Our Social Heritage*, p. 214 et seq. I was glad to find my appreciation of the importance of this problem supported. See this clash of national feeling between Mr. Asquith and Sir Joseph Ward on this point in the thrust and parry of question and answer at the Imperial Conference of 1911: *Proceedings*, pp. 55, 57, 58.

[2] Arts. 62–7.

[3] Dodd, *Modern Constitutions*, vol. ii, p. 121 et seq., Arts. 75 and 77–9.

[4] Art. 68.

[5] Art. 69.

[6] Art. 74.

its final validity. Deadlock may result. Upon this the President of the Commonwealth enters. If the Reichstag passed its Bill, against protest, by a *less than two-thirds* majority, the President may order a *referendum*, within three months, at his own discretion. If he does not order a referendum the law does not come into operation. He is thus a third factor in the making of laws. He may reinforce at will the power of the Imperial Council or call in a fourth legislative factor—the people. But the Reichstag may have passed the law, against protest, by a *two-thirds majority and more*; if it does it has defeated the Reichsrat: for the President can only choose between promulgating the law or submitting it for referendum. The Constitution-makers thus realized the need for a powerful First Chamber, but were determined to limit its sovereignty in important cases of dispute by the possibility of an appeal to the people. After all, responsible government is a very modern institution, and already, confused issues at elections, and long periods of office, have resulted in misrepresentation of the popular will. Consequently the referendum was introduced: there was a model in Switzerland.[1]

Further provisions for direct legislation were made. The President may at any time refer a Reichstag measure to the people at his own discretion.[2] Again, one-third of the Reichstag may demand that promulgation of a Bill be deferred for two months,[3] and unless majorities in both Houses resolve that such Bill is urgent, one-twentieth of enfranchised citizens may demand a referendum on it (called *Volksentscheid*). The fate of the Bill then depends upon popular judgement. It is hoped in this way to discover the will of the people where the Reichstag is closely divided. But the fault of Parliament may be that it omits to bring forward important measures. The 'people's request' (*Volksbegehren*),[4] therefore gives the opportunity for popular initiative. A draft Bill may be submitted to the Government supported by one-tenth of

[1] Cf. Max Quarck, *Geist der neue Verfassung*. Berlin.
[2] Art. 73.
[3] Ibid.
[4] Ibid.

the voting citizens. The Government must submit the draft to the Reichstag with a statement of its attitude. If the draft is not adopted without alteration by the Reichstag, it is submitted to the people and is made law if it obtains a majority. Confidence in the Government would very likely be undermined if the people passed a Bill to which the Government had shown previous hostility.

Amendment[1] of the Constitution takes place under special regulations. The Reichstag may only amend if at least two-thirds of its members are present, and if of these there is a two-thirds majority. The Reichsrat may *propose* an amendment by a two-thirds majority. The people may initiate an amendment. If the Reichsrat disapproves of a Reichstag amendment, it may demand an appeal to the people.

This, then, is democracy, ingenious and logical, and based upon the study of political pathology in other countries.[2] Whether it means *good* government no one can tell. It is very unlikely that such instruments as the referendum and the initiative will be used in the modern Great Society. The complex economic and social relations make it unlikely that direct legislation would be better in the long run than trust in a legislature based upon a sound electoral system. People argue from the case of Switzerland; but that small country is no sample for a country with widely different institutions, and the experience of direct legislation in the several States of the U.S.A. is certainly no encouragement to an extensive use of direct legislation.[3] A wide territory is no Council-chamber, where the majority may show, as it must if society is to live, its tolerance and kindness by accepting amendments from the minority, where tradition wards off fickleness, where desire for power engenders competence and responsible action, and where press opinion and news is accepted with a modicum of criticism.

[1] Art. 76.

[2] See opening speeches of President Ebert and Dr. Hugo Preusz in the National Assembly. Heilfron, op. cit., vol. i.

[3] Cf. Lowell, *Public Opinion and Popular Government*, Part III; Bryce, *Modern Democracies*, vol. ii, chapter lxv.; Holcombe, *State Government in U.S.A.*

The President is to be elected by the entire people for seven years. He must be at least thirty-five years of age, and is re-eligible without stated limit on the number of terms.[1] The President is more than a mere figure-head, for the Constitution-makers desired to, and did, avoid the weakness of the French President, the civil-servant character of the Swiss Federal Council, which takes its orders from the Assembly, the strength of the American President when he is in accord with Congress and his party leaders. A Parliamentary Executive was therefore established; but the President was given the powers of appeal to the people against the decision of Parliament, as previously described. His other powers of foreign negotiations, appointment of officials, federal execution (the use of force to compel a State to comply with the Constitution), 'the taking of the necessary measures to re-establish public security and order,'[2] the dissolution of the Reichstag (which note in comparison with practice in France), will, if practice in other countries be the guide, be exercised by the Chancellor and his Cabinet. A very interesting provision is on the power to *recall*[3] the President from office. It brings recollection of the power of the people in many of the States of the U.S.A., to recall officials and judges with whom they are dissatisfied. A two-thirds resolution of the Reichstag may demand the President's recall; he is then suspended from office, the Chancellor presiding until a referendum has taken place. If the vote should favour the President he begins a new term of seven years, and the Reichstag is dissolved for fresh elections; if he is defeated a new President is elected. This is to stop deadlock between President and Parliament. In America there is no way out, both President and Congress holding power for a fixed period, until the normal elections alter the balance

[1] Arts. 41 and 42.

[2] Cf. Emergency Powers Act, 1920, and recent Orders and Proclamations, during coal strike April–May 1921. The German law is very similar to the English law, and a German proclamation issued on November 10, 1920, during a strike crisis, contained phrasing and words almost identical with the English law. The German law was made first.

[3] Art. 43.

of power and bring the two Houses and the President into accord.

IV

The most hopeful aspect of the German Constitution is its realization of the connection between economic and political power. It realized that, beyond the right to make the mystic cross on a ballot-paper, the citizen needed an adequate control of his immediate interests in the production and consumption of wealth. This was the true meaning of the vital demand for responsible government that set in from the time of the Industrial Revolution.[1] From 1848, especially, has the expression of the desire for a social transformation become urgent. Widespread education, the labour movements in every country, and the promise of a wider freedom made by Government in war time, have obliged nations to establish, or to think about establishing, the means for a new world. Russia, for the moment, made the longest step, though perhaps mistaken because too long, in this direction; England lost the first promise of her National Industrial Parliament, and is content with optional Whitley Councils. France does little.

Germany before the war was already a great Socialist State, though not a democratic Socialist State. Her workshop regulations, insurance and pension schemes, gave abundant evidence of regulation and collective enterprise. On the downfall of the old Empire the Independent Socialists endeavoured to force a social transformation by the introduction of a complete Soviet system, in which Workers' Councils would have the whole executive, legislative, and judicial power. This the Government of Majority Socialists denied them. Peace was made between moderates and extremists in March 1919 by the Government's promise to establish Workers' Councils as an integral part of the Republican Constitution.[2]

Therefore Section V of the Constitution lays down the principles of economic life 'to correspond to the principle

[1] Cf. Lowes Dickinson, *Development of Parliament in the Nineteenth Century*.

[2] *International Review*, May 1919.

of justice, with the aim of ensuring, for all, conditions worthy of a human being.'[1] A Commonwealth Economic Council is created, to represent all important groups of occupations in proportion to their social and economic importance. It has the power to scrutinize important Government measures and to advise the Government. It may propose such Bills itself, and the Government is obliged to present them to the Reichstag. The Economic Council may support its case by sending a representative to debate the matter in the Reichstag. The Council is composed of delegates from the District and Commonwealth Workmen's Councils, together with representatives of the employers and 'other sections of the nation.' Such an Economic Council met on June 30, 1920.[2] It had 326 members and represented ten groups of interests, producers, officials, the community, etc. In this way it is hoped that the ordinary workman will be united with the central Government in virtue of his occupation and social interest.[3] There have been subsequent sessions of the Council: Government and other experts attended and gave information on various economic and social subjects. It had considerable influence on the Government's economic policy. There was some dispute between the groups of representatives on the relative importance to be attached to each group, and therefore the amount of representation and voting power to be accorded. This would be a most important question in a Guild State governed finally by a Guilds' Congress, but information is unfortunately not to hand as to how the dispute was resolved. The Works' Councils themselves are organized by the law of February 4, 1920.[4] Committees of Workers and Employees, elected by their fellows, are empowered to co-operate with employers on matters of pay, hours of work, introduction of new machinery, apprenticeship, pension funds, works dwellings. Conciliation Committees of equal numbers of employed and employers were established to settle disputes. The employers are compelled

[1] Art. 165.
[2] Cf. *Nation*, July 31, 1920.
[3] Cf. *Annals of the American Academy of Political Science*, November 1920.
[4] Ibid.

to submit wage accounts, reports on condition and progress of the business, profit, and expected developments, while the Works Committee can submit suggestions of business policy. The Committee cannot socialize without Government consent, nor alone settle disputes (that is, strike), for which purpose there stand the Conciliation Committees. The formation of 'wage agreements' or 'treaties' is put on a legal basis under the aegis of the Ministry of Labour. There is thus a new co-operation between the employer and the employed, secured by severe penalties in case of intentional defeat of the purpose of the measure.[1]

V

The German Civil Service, before the war, had a high reputation for technical efficiency, which was entirely dependent, as in all Civil Services, on the method of educative preparation and recruitment and discipline. Its organization persists, with slight modification in the direction of liberalization, now; and, as it is likely in its essence to remain as it was, it is worth brief description. There was a small Imperial bureaucracy, and State bureaucracies; the Prussian bureaucracy served, in its characteristics, as a basis for the law of the Imperial Service and the State Services. Not only the central departments, but also the local authorities, were almost completely in the hands of officials. From the middle of the eighteenth century officials had *directed* the administration, as well as administered; they had been expected to exercise discretion and initiative; therefore great attention was paid to organization and preparation of these 'professionals.' The officials became a guiding and controlling caste, and in modern times were not directed by 'amateur' Ministers who wielded power by right of parliamentary confidence.[2] Great statutes gave them, as a body, definite rights in the matter of dismissal and discipline, and on the other hand set out educational

[1] Cf. *Korrespondenzblatt des Deutschen Allgm. Gewerkschaftsbund*, Berlin, January 31–February 21, 1920. This gives a good account of the law and the background of opinion.

[2] Cf. Goodnow, *Comparative Administrative Law*, vol. vii, p. 266 et seq.

requirements.[1] The Service was divided into a *higher* policy-making and administrative class, and a *subaltern* executory, clerical, copyist class. The higher officials included, on the one hand, judicial officers, and, on the other, political administrators from the rank of Under-Secretary downwards to certain ranks of local government inspectors. Good secondary education, a three years' university law course, at the end of which an examination, oral and written, in law and political science, was required; then four years' practical experience in an office, or the Courts, followed by a final examination in law, administration, and political science before the central examining body. The training thus differed from the English method for First Class Civil Servants, who till very recently were examined in Senior Classical courses at Oxford and Cambridge, and then learnt their technique in the course of their work. The English method produced an excellent type of servant who combined in the long run technical efficiency with liberalism, in which latter quality the German services were wanting. In Germany the subaltern services were filled by men with good army records who were tested by examinations, or could produce good records from a recognized secondary school. Strict rules determined professional decorum[2]; the State could in late years be sued for tort, and then would take measures against its wrong-doing official; to maintain discipline a series of warnings, reprimands, money fines, and partial or complete suspension from service was in operation; dismissal cases came before the Departmental Disciplinary Courts, with judicial referees and under proper judicial procedure; a final appeal lay with the Imperial Court of Discipline, five of whose eleven members belonged to the Supreme Courts. Promotion went largely by seniority, *because the original test of capacity was so searching;* but a bad record could stop a man from promotion into the class next above. Thus one and a half to two million of the citizens, who earn a living by being officials, were hived off from the rest of the community by being expected to have no

[1] See *Revue Politique et Parlementaire*, September–October 1908.
[2] Fribolin, *Die Frage der Deutschen Beamten.*

political party ties, to refrain from criticism of their Government or of conditions of pay and work. This meant dehumanization. The new Constitution grants the officials complete political freedom, gives them special representation on committees dealing with the welfare of officials; abolishes the secret personal records—the very essence of the police-state—allows examination of personal record and an appeal against any derogatory entry. In this way it is hoped to bring the official into a more human relationship with the mass of other producers and so liberalize the administration.[1]

VI

Altogether we find in the new Constitution a loyal attempt, based upon careful study of foreign experience, to establish institutions which should give social and individual purpose, as known to-day, its fullest scope. The clauses on civic rights and duties, which space compels me to omit, are earnestly commended to the reader's attention.[2] The Constitution is an example of conscious thought applied to a purpose, and that purpose a freer, fuller life.

Anatole France once spoke of modern Republics: 'The new State received the name of Public Thing, or Republic. . . . The Penguin democracy did not itself govern. It obeyed a financial oligarchy which formed opinion by means of newspapers, and held in its hands the representatives, the Ministers, and the President. It controlled the finances of the Republic and directed the foreign affairs of the country as if it were possessed of the sovereign power.'[3] If the new German Constitution works as its authors intended, the first Republic will have been crossed off the list of the guilty. The 'Might-State of Governments' has given way to 'a State with a new profound soul.'[4]

[1] Arts. 129–31.

[2] Part II, *The Fundamental Rights and Duties of Germans.*

[3] *Penguin Island*—cheap translation, John Lane. The page is not quoted; the reader will find joy in a slow search through the book for the quotation.

[4] Liepmann, *Die Bedeutung der Reichsverfassung für die geistige Kultur*, pp. 3, 4, et seq.

CHAPTER VI

THE UNITED STATES OF AMERICA

I

THE most remarkable point about the government of the United States is the striking disparity between the tremendous promise of the land, its more than one hundred million people, the industries and social forces, i.e. the material of government, and the actual governmental institutions. The land teems with life, but the public institutions are now too decrepit to give it adequate expression.

President Taft tells an applauding Commission of his 'profound admiration for the political adaptability of the people to make a machine work that nobody who had any real business sense would think would work under any other conditions. They get along somehow. It costs them double what it might do. But so it is.'[1] Bryce says: 'The governmental powers resign themselves to a conscious impotence.'[2] Again we read: 'To Aristotle, "politics" may have signified the science of government, and to more recent political scientists the term may have to do with "the expression of the will of the State"; most of us think of the product made in America . . . we are depressed; what is worse, we are confused.'[3]

Never before in the history of the world has there been such a change in social purpose as the last 140 years have witnessed; yet, in its essence, the American Constitution, made at the beginning of that 140 years, the embodiment of now outworn ideals, faded hopes, old fears, primitive economic and social facts—that arrangement of society still dominates and cramps and arrests the vital, toiling ideal of a mighty people. The demon

[1] Cf. *Municipal Reform*, July 1915, p. 582.
[2] Cf. *American Commonwealth*, vol. i, p. 308.
[3] Cf. *Annals of the American Academy of Political Science*, March 1916, Introductory Review.

of the people has so developed that it presses against the bars of uncongenial institutions: these must be refashioned. Such refashioning is the essence of statesmanship and government.

II

Consider briefly the origin of the Union. From 1776–83 the American Colonies made their declaration of independence a fact by the force of arms.[1] From 1776 a common authority, established by them, the Continental Congress, empowered by Articles of Confederation, had endeavoured to guide the common effort. But the 'particularism' and jealousy of the States had resulted in its being given inadequate power. It was supposed to be 'a firm league of friendship,' and developed into a league of disgruntled independents. Congress's power was *not mandatory, but recommendatory* (the shape future British Imperial relationships will most likely assume)[2]; and the States could not be compelled to carry out its suggestions. It had not that final source of political power, the power to tax for its own purposes. State patriotism was as yet too strong for a Federation; just as national feeling in the Dominions of the British Empire is too strong for anything more than a loose confederation. After 1783 the impoverished Colonies, almost drowned in the flood of paper money, once more separated, and strengthened their commercial restrictions, indulged in quarrels over boundaries, and refrained from attendance at sessions of Congress.[3] The internal economic condition of the country was appalling[4]; credit was refused from other countries, and trade fell off; property was in danger.[5] The ideal of a greater union, fear of economic and social chaos, desire for a resumption of trade relations with Europe (stopped through the small credit of the States)

[1] Cf. the brilliant *Life of Alexander Hamilton*, by F. S. Oliver.

[2] Cf. Duncan Hall, *British Commonwealth of Nations*; and Keith, *Select Documents . . . on British Colonial Policy*, vol. ii.

[3] Cf. Farrand, *Framing of the Constitution*; and Stevens, *The Sources of the Constitution of the U.S.A.*

[4] Cf. Beard, *An Economic Interpretation of the Constitution.*

[5] Cf. Beard, *American Government and Politics*, p. 34 et seq.

led towards 'a stronger central authority.'[1] Meetings to discuss commercial arrangements, and the development of territories, finally resulted in a Convention of delegates, who were amazingly well versed in the theory and practice of government and law, at Philadelphia, from May to September 1787, and worked out a Constitution (at work in 1789) in spite of the diversity of State interest, and in spite of strong feeling against a central authority maintained by the rural population. The Constitution was at length ratified by the States, and it is interesting to remember that most of them had high property qualifications for the right to vote. *The Federalist* started its argument and persuasion with this theme: 'It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not *of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.*'[2]

. Models in the State government and the government of England were to hand for what they were worth.

III

The outstanding forces moulding the character of the Constitution, upon which 'reflection and choice' were based, were two. First, the economic facts of the time; second, the consolidation and harmony of antithetic political theories.

A. Taking the whole country, there was little striking inequality of wealth, and large-scale industry had not yet begun to replace the small manufacturer and the agriculturist. Above all, there was as yet no question of controlling all those delicate relations between men and groups, made necessary later by the vast industrial society in which the producer and the consumer are

[1] Cf. *Federalist*, Essays Nos. II–X (Everyman Edition). The Essays make a model book of political thought, directed to an actual set of institutions.

[2] Ibid., Essay No. I.

not in direct contact, in which there is specialization of function and its concomitant, specialization of interest and loyalty.[1] It was as yet the age of the small, isolated rural locality, the waggon and the post-chaise. The propertied classes which dominated the Convention were afraid of unbounded popular freedom, which had been the sustaining force of the Revolution. They wanted stability and property.[2] Thus permanent force was given to economic facts of local and temporary importance only.

Consequently, with the transformation of economic facts, eighteenth-century theory and institutions have become inadequate, and there is need for a new synthesis. We may see the force of this by a consideration of (*a*) the division of powers between the Federal Authority and the States; (*b*) the process of amendment; (*c*) the interpreting power of the Courts.

(*a*) The States were induced into the Union only after the promise of equal representation in the Senate.[3] A distribution of powers was made and recorded in the Constitution. The division was on an apparently simple principle: powers of *common* importance to the Federation; other powers remained with the States. This simplicity of division was not borne out in practice, for great disputes have centred around questions of competence.[4] To the States, be it noted, were reserved such powers as the regulation of education, relations between employers and employed,[5] the law of contract, property and corporations. The question of State independence and progressive centralization soon arose. Economic and social need proved too strong for the argument of State 'natural rights' to independence and sovereign power. While the life of the States centred in the State and not in the Union outside the States, such argument was not seriously questioned. But the Civil War showed that there was a power in being and growth outside the States,

[1] Cole, *Social Theory*; Webb, *Socialist Commonwealth*, Introduction and Part I.

[2] Cf. Beard, *The Supreme Court and the Constitution*, chapters iv and v, and *Federalist*, No. X.

[3] *Federalist*, No. LXII.

[4] Cf. Macy, *Comparative Free Government*, p. 7.

[5] Cf. Bryce, *American Commonwealth*, vol. i, c. iv.

and the issue of the war decided the question of ultimate sovereignty in favour of the nation.[1] The modern States were in the process of growth stretching across the Continent, united by all the modern ties of industry, commerce, news, and railroads. State boundaries became meaningless. They were not economic regions: variety of State laws hampered industries which had developed regardless of boundaries. The State Governments also hampered the movement towards a better social system: for the States controlled what were in the early nineteenth century of little importance, the relations between employers and employed, company law and regulation of property rights; but the old economic equality had given way to the rule of striking inequality; this bred a conflict of interests, masters against men. The States governments were caught in the toils of a mercenary party machine and the 'boss,' and became corrupt,[2] so that the central authority was looked to for common regulation. The Nation takes precedence of the States, but only with slowness and difficulty. Its power of regulating 'inter-State' commerce has had to be stretched to secure control of railways (Inter-State Commerce Commission, 1885), and to combat the unfair operations of gigantic trusts (1890, and Supreme Court decisions of 1911),[3] and, although not intended, over corporations (by the 14th Amendment). It cannot touch regulation of hours and conditions of labour in workshops and mines,[4] unless the Supreme Court considers such action reasonable. It is the business of the States. A redistribution of powers is needed. Meanwhile, the facts point to new units of government. A movement for greater 'Home Rule'[5] for the cities is being vigorously conducted; they, together with the surrounding industrial districts, form better areas of administration than the old States. A new devolution

[1] Cf. Wilson, *The State*, special edition, 1919, p. 293 et seq; Holcombe, op. cit.

[2] Cf. Reinsch, *American Legislatures*.

[3] Cf. Beard, *American Government and Politics*, p. 379 et seq.

[4] Cf. *New Republic*, December 16, 1916, 'The Failure of the States,' and 'Sovereignty and Centralization' in the same number.

[5] Cf. Beard, *American City Government*; and Howe, *The City: the Hope of Democracy*.

of power to industrial areas which have their own particular characteristics[1] and needs is suggested: as a consequence, a keener public spirit would inform the public life of the lesser areas. Economic function, not an outworn patriotism, is the basis of modern administrative areas, if men still want the material advantages of the Great Society.[2]

(*b*) Yet the process of amendment is difficult. For amendment there is required a two-thirds vote of Congress (the two Houses separately) or of a special Convention; and this vote must be ratified by three-quarters of the States' Legislatures, or special *ad hoc* conventions. How unwieldy this is as an instrument of change will be seen from the fact that up to 1890 some 1,900 amendatory resolutions were submitted to Congress. Only 19 of these obtained the assent of both Houses and only 15 were added to the Constitution. In 1913 an amendment permitting the raising of income-tax by the Federal Authority was added; in that year, too, direct election of Senators was prescribed; then came Prohibition and Women Suffrage. Agitation lasting over decades was necessary before the conditions for constitutional amendment could be met.

(*c*) What amendment finds it difficult to do the Courts might do. They are the balance-wheel of the Constitution.[3] They, and finally the Supreme Court, ultimately decide whether a power exercised is within the competence granted by the Constitution to the States, to the Federation, to Congress, or to the President. Congress, for instance, has not unlimited legislative power as the British Parliament has. By Article 1, Section 8 of the Constitution it can only do eighteen things; it has to be careful to keep within its competence. If it does not, the declaration of unconstitutionality renders such Act void of legal force. Consequently the opinion of the Courts, and especially of the Supreme Courts, has always been of the highest importance, since it is obvious that

[1] Cf. Laski, *Foundations of Sovereignty*, for the philosophy of decentralization.

[2] Cf. especially, on the passing of the States, Croly, *The Promise of American Life*, chapters iv. and v.

[3] Cf. Wilson, *Constitutional Government*, chapter vi.

the few brief clauses found in the Constitution were not, and are not now, sufficient to rule the fundamental principles of national life. The Supreme Court is composed of nine judges, appointed by the President, with the consent of the Senate, for life. Five judges, therefore, when the nine sit, four when the minimum six sit, may have a tremendous influence upon the life of the nation: as, for instance, when, in 1895, it declared unconstitutional the federal income-tax law, and necessitated agitation and amendment of the Constitution in 1913. From 1789, with a few exceptions, the Supreme Court has fortunately favoured the centralizing power and has discriminated against the States when the constitutional clause has given it opportunity. It has a splendid reputation for the learning of its judges and the profundity of its judgements.[1] But from 1865 the Courts have been compelled to search carefully among constitutional clauses for proper principles in face of a society whose economic and social interests were and are rapidly changing, and where organizations of property owners and propertyless workmen were increasingly coming into conflict over the very fundamentals of industrial and civil life. Especially has the struggle centred around the 14th amendment, which, originally intended to define and protect the civil rights of the negro population, was stretched to cover numbers of cases in which corporation and property rights were concerned. The changes were rung on eighteenth-century *laissez faire*, individualistic principles, on the sentence, 'nor shall any State deprive any person of life, liberty, or property without due process of law.' Modern judges seem justly to have been accused of class bias against those who came into conflict with property and any conservative interest. The judges are in reality more than judges; they are 'ultimate lawgivers,' statesmen, appointed for life[2]; for whether the Federal Government can legislate on terms and conditions of labour, e.g.,

[1] Cf. Bryce, *American Commonwealth*, vol. i, chapters xxii.–xxv., and especially judgement of Mr. Justice Holmes in Haskell *v.* Noble State Bank, 219 U.S. 104, 110. Discussed in *Harvard Law Review*, April 1916, p. 692.

[2] Cf. *New Republic*, April 21, 1920, 'The Supreme Court *v.* The Supreme Court.'

depends upon how five judges out of nine interpret the law made as 'reasonably' within Federal competence;[1] the judges have admitted the doctrine, '"only what is expedient for the community" is the secret root from which the law draws all the juices of life,'[2] and it is their individual ideas of 'expediency' which determines their judgement on 'constitutionality.' So that this second source of change is not one upon which reliance can be placed under modern conditions of economic conflict.[3] It may be noticed that, if a scheme of devolution were adopted for the United Kingdom, some tribunal would be needed to judge in disputes over the extent of power given to the new provinces: an enormous amount of litigation has arisen in U.S.A. on such disputes.

IV

B. Political theory, too, determined the content of the Constitution. The strain of innate disposition to be free from authority and the Lockian theory of the English Revolution from 1624–89, combined to urge the Revolutionists towards *liberty* as it was then understood, viz. *the freedom of the individual from government interference.* It meant 'no regulation,' and was mainly a revolt from centuries of royal command, pointed, in the case of America, by the sinister policy of George III.[4] Such a theory of liberty was organized and embodied in the Constitution on an erroneous analysis of English government. It was thought necessary to divide up governmental power into three branches, the legislative, the executive, and judicial—and then to put these each

[1] Wilson, *Constitutional Government*, pp. 178 and 179 especially.

[2] Justice Holmes, *Common Law*, p. 35. Quoted in Merriam, *American Political Ideas*, 1865–1917, p. 173. On the whole question of the Courts see op. cit., chapter v.

[3] Attention should be drawn to the articles of Dean Pound, 'Scope and Purpose of Sociological Jurisprudence,' *Harvard Law Review* (1911); and Frankfurter, 'Constitutional Opinions of Justice Holmes' *H.L.R.*, 29, 683 (1916); also 'Hours of Labour and Realism in Constitutional Law,' *H.L.R.*, February 1916; also Gustavus Myers, *History of Supreme Court*; and to the interesting *Theory of Social Revolutions*, Brooks Adams; also Holcombe, op. cit.

[4] See Jules Roche, op. cit., who, to weaken the strength of Parliamentarism in France, suggests a return to 'separation of powers.'

into the hands of independent and separate departments. Command of more than one branch of power by a department was conceived to be dangerous to liberty. George III had been able to oppress the Colonies because he commanded the legislature by his band of 'friends.' Prior to that it was considered that England had lived as a model of liberty, the powers of Crown, Parliament, and Judiciary being separate. Montesquieu and the great English lawyer, Blackstone, were the oracles consulted and cited on this subject; each had derived his theory from the government of England.[1] The theory was wrong in its induction, for there was in England actually a new executive body growing, the Cabinet, whose very power was derived from its connection with the Legislature. Even Englishmen had some years before condemned, with anxiety, the new spectacle of a 'Prime Minister,'[2] and thus it is not surprising that Montesquieu and the American statesmen should have been mistaken.[3] The actual fact was missed,[4] and first in the zeal for liberty, and later through the force of usage, the doctrine was adhered to on important occasions of conflict. For instance, the first Secretary of the Treasury, Hamilton, was debarred from speaking in Congress[5] in spite of protest by Madison, who saw the impossibility of ever sustaining this 'separation of powers.' Planning and execution of measures were therefore kept separate. President, Congress, and Judiciary were kept apart and made to 'check and balance' each other, while the force of circumstances tended to bring them together.[6] In England and in the countries which have copied the Cabinet system of Government, the system of a Parlaimentary Executive, there is 'a synthesis of action'; in America

[1] Cf. *Federalist*, No. 51, and see p. 245 et seq.
[2] Ibid.
[3] Cf. Morley, *Walpole*, p. 139 et seq.
[4] Cf. Pollard, *Evolution of Parliament*, chapter xii. He shows, however, insufficient sympathy with the difficulty of American statesmen in divining the ultimate importance of a small, and perhaps unconscious, innovation in an alien government. That they were good observers is shown by *Federalist*, No. XLVII, where Madison notes that in England the powers of government were connected.
[5] Cf. Ford, *Rise and Growth of American Politics*, p. 65 ff.
[6] Cf. Bagehot's classic chapter viii of *The English Constitution*.

the several authorities constantly confuse each other, by considering the same subject from different points of view. They move in their own orbit, on Newtonian principles.[1] Yet nothing is more true, to-day, than that good government depends upon a blending of powers and 'a community of purpose.' Congress is therefore organized differently from the representative assemblies in which the Cabinet leads; Budget procedure is different; the United States Cabinet is of a different nature from the British, French, or Italian Cabinet; a relating force—party organization—not found in the Constitution, maintains from time to time co-ordination and harmony between the several factors of government.[2]

V

Congress is composed of the House of Representatives and the Senate, each endowed originally with co-ordinate powers save in the matter of finance. The Senate was established to be a guardian of State rights; and, secondly, to be a check upon the 'violent passions,' 'intemperate resolutions,' 'errors,' and 'mutability of the public councils' of the Lower House.[3] Congress is concerned mainly with appropriation for the Federal Departments, ways and means (a subject of controversy), and regulation of the departments.[4] Its debates centre more around questions of constitutionality than expediency. Tenure of seats, save of late years in the case of several senators, tends to be shorter in America than in Europe, owing to the 'democratic' idea that good things should be passed round, and that one man is as good as another when it comes to making laws.[5] America thus comes perhaps first on the list of democratic countries which have little regard to such an important matter as the competence of members of the legislative assembly. The 'separation

[1] Cf. Wilson, *The New Freedom*, p. 47; *Constitutional Government* and *Congressional Government*.
[2] Cf. Wilson, *The New Freedom*, p. 47 et seq.
[3] Cf. *Federalist*, No. 62, which puts the traditional argument for a Second Chamber most persuasively.
[4] Cf. Willoughby, *Problems of a National Budget*, p. 98 et seq.
[5] Cf. Merriam, *American Political Ideas*, chapters iii and iv.

of powers' is the better maintained by the constitutional provision that members of Congress cannot hold civil office under the United States authority while they remain members. Congress is disconnected from the Executive, but party organization brings the two powers together at times: how much authority each department may wield depends on the nature of its relationship to the electorate, and, secondly, upon the circumstances of the moment, which favour now this, now that, power. This will become clearer as the discussion proceeds.

VI

Electoral arrangements for the House of Representatives are left to the States, who are limited only by the letter of the 14th and 15th Amendments, designed to protect the right to vote of the Negro. The ingenuity of most States has, however, enabled them to disqualify the coloured population from voting. Again, the intention of the law for electoral single-member conditions has been defeated by 'gerrymandering'[1]—the practice of great artistic ability in carving out the district so that all your opponents' supporters may be compressed into a few districts, with a few overwhelming majorities, while your own supporters are spread into a great number of districts, with small majorities.[2] This results in grossest misrepresentation, and both parties alternately suffer and enjoy. By 1914 women had the right to vote in a dozen States; in 1920, by the 19th Amendment, the suffrage for women became nation-wide, and on the register there are about 28,000,000 women voters and 30,000,000 men. The constituencies are of great size, one member on an average representing some 200,000 citizens (after 1911 census). The importance of party organization is plain. This 200,000 compares with the German 60,000 *voters* per member, the English 70,000 *citizens*, and the French 60,000 *citizens; twenty American constituencies would cover the entire population of Switzerland.*

The House is elected for a period of two years, every

[1] Cf. Reinsch, op. cit., p. 202.
[2] Cf. Commons, *Proportional Representation*, chapter iii.

odd second year, in November. Owing to the arrangement of sessions, its effective working period is about twelve months normally. It has, therefore, no time to make itself thoroughly conversant with the course of modern complex business, and is consequently the sport of the older members, who throng the committees; it must work quickly, and is therefore bound by most stringent rules of procedure; since the House is soon to dissolve, the member is always a candidate.[1] All this because the Jeffersonian democrats thought that 'where annual elections end, tyranny begins.'[2] The House has therefore little virility.

Since there is no Ministry to lead the 435 *members* through the maze of their duties, organization is achieved by two factors, the committee system and the Speaker. The Bills, of which multitudes are presented by private members, can be debated until they are reported upon by the committees, which kill some and place others in order of precedence, just as the Government in England controls parliamentary time. Very much the same holds good of the Senate. This gives rise to a rigid committee organization in the two Houses. Both Houses work with about sixty committees each; but only about one-half have business at any one time. The committees are composed of members of majority and minority. Since 1910 they are chosen by the Committee of Ways and Means, whose twenty-one members are chosen by party meetings, called party *caucuses*, of the members of the House, fourteen representing the majority, seven the minority. The committees, established for every branch of government, vary in importance, but of paramount and permanent importance are the Committee of Ways and Means, concerned with revenue Bills, the debt, and general tariff Bills; and the Committee Appropriations, dealing with Supplies and the Estimates. The committees are in reality a 'species of miniature legislatures,'[3] for they have the vital powers of discussion of the principle

[1] Cf. McCall, *Business of Congress*; also Beard, *Readings in American Government*, p. 225.
[2] Cf. Merriam, op. cit.
[3] Cf. McCall, op. cit.

of Bills, and may report or not to the House. The committees become either sponsors or censors.[1]

The House is, under these conditions, no debating Chamber: the decisions are made in the committees, in (most often) private meeting; the House receives only an explanation. Here, then, is the importance of minority representation in the committees; the tolerance of amendment is allowed there.[2] The committees stand, too, increasingly as links with the experts of the departments and form the avenue of suggestions from the Executive.[3] Congress's timidity in receiving suggestions is being overwhelmed by recognition that the 'separation of powers' is no fit theory for modern public administration.[4]

Altogether the committee system results in lack of single directing harmonizing will in legislation; overlapping jurisdictions, disputes, and some inconsistency in the laws. Division of power means division and indefiniteness of responsibility: *the connection between public opinion and law is exceedingly difficult to trace through the whole maze of personality, interests, and secrecy which enter into these legislatures of twenty-one.* The lack of harmony and responsibility is especially noticeable in financial provision—to be discussed later. From the point of view of political control the whole criticism against the committees might be expressed by saying: 'When the units are supplied, the politicians work out the sum to suit themselves.'[5] The law-makers, as law-makers, do not come before the country as the Ministers and Prime Minister do in England. The Press cannot report the debates; corrupt influence is facilitated; the House is too badly organized to tear up suspicious bargains.[6]

The Speaker is a party man, and rules procedure to secure the passage of his party's measures when they issue from committees. The rules now give specified time

[1] Cf. Wilson, *Constitutional Government*, p. 90.
[2] Ibid., p. 97 et seq.
[3] Cf. McCall, op. cit., p. 50, and Roosevelt, *Autobiography*, chapter x.
[4] Cf. Beard, *Readings*, p. 268, and especially *New Republic*, September 29, 1917.
[5] Cf. Reinsch, op. cit., p. 187.
[6] Cf. Bryce, op. cit., vol. i, chapters xv and xvi.

per speaker, but the Committee on Rules, now chosen by the Committee of Ways and Means, may, with the agreement of the Speaker, suspend or make special rules for special occasions.[1] As an instrument of his party caucus, as an authority in a disorganized House, as a link with the President, the Senate, and the 'floor leaders,' he wields great authority, and promotes, though weakly, some unity between many confused powers.[2] Since 1900, when the House revolted against a too despotic Speaker, authority has tended to pass to the 'floor leader,' the Chairman of the Committee on Ways and Means.

VII

There are two Senators per State, giving a total of ninety-six. Originally, through fear of democracy, Senators were elected by the State Legislatures. This resulted in a vicious confusion of State and National issues,[3] because only candidates agreeing to vote for certain Senators were elected, and accounts to a large extent for the corrupt condition of State politics, and the packing of the Senate with the controlled representatives of industrial interests by 'bosses,' who became merchants in legislation. From about 1870 a strong campaign was started for *direct election* of Senators: secured only in 1913, when Amendment 17 was carried.[4]

The Senate is much more powerful than the House of Representatives, in spite of the fact that it was intended originally to be only a body of *resistance*. Its 'States' rights' character is departing from it. It is a continuous body, each Senator being elected for six years, one-third going out every two years. It therefore became strong in face of the Lower House, and attracts better men, as well as party manipulators, who are interested in Federal patronage and important industrial legislation (mainly through tariff Bills).[5] Debate is not limited, since

[1] Cf. Ford, *An. Am. Ac. Pol. Sci.*, November 1915.
[2] Cf. McCall, *op. cit.*, p. 13; Wilson, *Constitutional Government.*
[3] Possible in the United Kingdom if it adopted Devolution on the lines of Mr. Speaker's scheme. Cf. *Conference on Devolution*, Cd. 692. See especially Holcombe, op. cit, p. 180 et seq.
[4] Cf. *Political Science Quarterly*, vol. xx, No. 2.
[5] Cf. McCall, op. cit., p. 110 et seq.

there are few members: it therefore looms larger in the public eye than the House. The Senate usually has the last word in legislation in case of dispute, ended by free conference, (1) because it is continuous, while the Lower House dies every two years and would lose its measures at dissolution; (2) because it has a party influence over the Representatives from the same State. It is in intimate connection with insurance, railways, mining, and industrial corporations,[1] and represents the various localities more equally than the House, which is based on population.[2] It freely amends Appropriation and Revenue Bills, and has even cancelled the Representatives' clauses and substituted others.[3]

To sum up: the Senate has, by force of its manner of composition, usurped the political primacy,[4] and has become the main centre of authority in Congress. Without a Cabinet as in England, through the 'separation of powers,' authority was bound to go to the more compact body in the Legislature.

Altogether Congress, with its 'by-ways of legislation,' favouring constantly the great industrialists,[5] concerned with the peddling affairs of out-of-the-way localities, and jealous of the President's power, has got to itself a reputation, well merited, of a muddling, wasteful body. The distribution of 'pork,' advantages paid for out of government funds, blessing one part of the country, then another, according to the fortunes of parties, has despoiled the community.[6] Nowhere is the disintegration of authority and responsibility in Congressional government shown so well as in *government finance*. To get the maximum social benefit with the minimum of national sacrifice in taxation, a *single* authority should control the determination and relation of *how much* is to be spent, *on what services*, and *how the money is to be raised*. This

[1] Cf. Reinsch, *American Legislatures*, p. 46 et seq.
[2] Cf. Wilson, *Constitutional Government*, p. 117 et seq.; also Lynn Haines, *Your Congress*.
[3] Cf. Reinsch, *American Legislatures*, p. 112.
[4] A. M. Low, 'The Usurped Powers of the Senate,' *Am. Pol. Sci. Rev.*, vol. i, p. 1 et seq.
[5] Wilson, *The New Freedom*, p. 59 et seq.
[6] *An Am. Ac. Pol. Sci.*, March 1916, p. 43 et seq.

theory has been worked out best in England,[1] where both questions have rested in the hands of the Cabinet, the spenders, aided by the Treasury's constant expert information, and censored by the Chancellor of the Exchequer.[2] But in America no Budget system exists. Thirteen general separate Appropriation Acts are considered, and piloted through the House by nine different committees, none of which controls completely one Department of State, nor has continuous direct relations with its work. Financial provision is fragmented, not integrated in a Budget. Proposed expenditure is not the criterion for the Committee of Ways and Means, which says how revenue shall be raised. Revenue is obtained mainly through tariffs and excise, and since 1913 by an income-tax. The tariffs are assessed from the point of view of 'protection' of industry, and receipts have, with slight exception, always given surpluses, so that Congress was not pressed to work out a careful relation between two sides, outgo and income, for a Budget. In the committees special pleaders enter; their concern is not for sound national finance, but for profit arising out of a change in the tariff. There are conflicts between Departments, surpluses, deficiencies, waste of money in providing public buildings. Of late years, 1909–20, the system has come under serious criticism, and attempts at reform have been made; but the fact remains, as the Secretary of the Treasury reported in 1911: 'The separation of power stands in the way. . . . The question of the expenditure of a great Government like ours is altogether too large and too complex to be scientifically handled by anything but a thoroughly organized responsibility which shall represent both the legislative and executive departments.'[3]

[1] *Machinery of Government Report*, p. 18.

[2] Cf. Willoughby, *Problem of a National Budget*; Fairlie, *National Administration of the U.S.A.*, p. 50 et seq.; and *An. Am. Ac. Pol. Sci.*, November 1915.

[3] Cf. Willoughby, op cit., p. 130 et seq., for history of the attempt at reform; and *New Republic*, January 7, 1920.

VIII

There remains in America no fiction or sham of an infallible King, though the Nation cannot be sued for tort. A Presidency was created: not a sovereign, but an agency, elected for seven years, and limited to execution of the powers given by the Constitution or Congress, with 'vigour and expedition.'[1] A one-man Executive was chosen because responsibility could be better brought home to one man. Unity and responsibility go together—a principle implied in the establishment of 'collective responsibility' in countries with a Cabinet executive. Consider his powers first, and then his mode of election.

His powers of domestic administration are summed up in the phrase, 'the faithful execution of the laws' with which he is charged. He is dependent, then, for his scope of power on the laws. From about 1885 the development of industrial and transport interests, the rise of great economic groups and their possible conflict, and the entrance of federal regulation, has made the Presidency highly important.[2] Bryce's statement[3] that the direct domestic authority of the President is in time of peace small, is rapidly going out of date. In time of war his powers are great, because Congress is compelled by the nature of things to extend executive power; that power is reinforced by the President's position as Commander-in-Chief of the armed forces; he has the right to any power 'to weaken the resistance of the enemy.' Both Lincoln and Wilson wielded tremendous power because events necessitated it. In the long run the President's power depends upon his interpretation of the phrase 'faithful execution of the laws'—he may be vigorous, or lax; dominant or recessive. There is, as Roosevelt pointed out, the 'Lincoln-Jackson' school, dominant and daring, 'affirmative,' and the 'Buchanan-Taft' school, waiting for Congress to lead: a division on temperamental lines[4]; and the history of the Presidency has been a

[1] Cf. *Federalist*, No. LXX.
[2] Cf. importantly, *New Republic*, September 29, 1917, p. 234 et seq.
[3] Op. cit., vol. i, p. 54.
[4] Cf. *Autobiography*, p. 394 et seq.

history of alternations in executive force. But from about 1890 the powers of Congress seemed to decline before that of the President. Why? Because it was a period of awakening, self-criticism, "muck-raking," as the phrase goes, and reform movements in State and Nation. The President stood out as the representative of the whole people, ready, and often able, to carry out election promises in face of a Congress distracted with local, sectional, and unworthy cares: 'When Congress attempts to dominate the executive, its objects are generally bad and its methods furtive and dangerous.'[1] The old social expectation based on strict individualism had broken down, and to express a new expectation a new instrument was needed; the people became attached to the Presidency, encouraged thereto by the work of Cleveland and Roosevelt, Taft (not so much), and Wilson's first election campaign. The power to veto legislation, always used, became a potent instrument of presidential power in the elimination of bad Bills (Congress, it is true, may override the President's negative by a two-thirds majority subsequently).[2] The four Presidents shone Congress into contempt. Wilson thought that a man of ability could make the Presidency, as in the early years of the Union, 'the true centre of the federal structure, the real throne of administration, and the frequent source of policies.'[3] He wanted the Presidency to become a Premiership, not remain a mere superintendency. The other Presidents thought so too, and through their parties and Cabinet officers moulded legislation in the Committees of Congress.[4] 'Mr. Wilson led (substitute the names of the other Presidents and it is true), but he was placed at the disadvantage of being denied the right to lead in person, and having to exercise command at long range and through deputies.'[5] 'Indirect Government' has replaced 'separation of powers';

[1] Cf. Croly, op. cit., p. 59.
[2] Cf. Finley and Sanderson, *The American Executive*, p. 206 et seq.
[3] Cf. *Congressional Government*.
[4] Cf. Roosevelt, op. cit.; Cleveland, *The Independence of the Executive*; Taft, *Four Aspects of Civic Duty*, p. 100; and A. M. Low, *President Wilson*.
[5] A. M. Low, op. cit., p. 106.

but deadlock comes when the President's policy is different from that of the party in power in both Houses.[1] The President's message to Congress, used as a call to the people, was once more spoken in person, as before 1801, by President Wilson. The advent of President Harding seems to herald a return to the dominance of the Senate, for, 'under cover of what they call Americanism and Constitutional Government the elder statesmen were determined to restore the party to what it was before the White House became the centre of authority.'[2]

The President has important powers in the appointment of officials. By Article II, Section 2, officials were divided into two classes, 'inferior' officers, appointed by the President alone; other officials appointed by the President with the advice and consent of the Senate. Until 1883 practically all the offices came into the 'spoils' which went from party to party, as each in turn controlled the national administration. In 1883, after long reform movement agitation, the Civil Service Reform Act established a Civil Service Commission to set examinations for appointment to offices 'classified' for such purpose—reclassification and growth in the number of federal officials has applied the 'merit system' to 292,000 out of 482,000 officials employed.[3] But our special concern for the moment is with those offices not 'inferior.' Most of them are postmasters, others are heads of departments, bureau chiefs, judges, revenue officers, commissioners. They number about 7,000, and were not, of course, intended as patronage; but the exigencies of the peculiar American party organization rendered necessary some means of reward for 'party workers,' and from the early years of the Union the appointing power was used to bolster up electoral organization and party power. In the course of history the Senators forgot that their intended duty was to eliminate the unfit for office, and began to agree only to those appointments which suited the Senators from the State in which the office was vacant. This is

[1] E.g., in President Wilson's second term the Republicans had gained the ascendancy and his power was fettered.

[2] Cf. *New Republic*, June 23, 1920, pp. 108–9.

[3] Cf. Bryce, *Modern Democracies*, vol. i, p. 104.

the practice of 'Senatorial courtesy.' The President is quite under control of the Senate in these appointments, his party leaders are determined, and the Senators of his party claim their right. If of an independent character, like Roosevelt, Garfield, Cleveland, or Wilson, he can insist on fitness being the first consideration.[1] He is almost *bound* through pressure of business to take the Senators' word.[2] But he may demand loyalty to 'the administrative policy' as the price of prompt agreement.

His Cabinet is largely his own choice; though pre-election campaign promises are sure to determine his choice.[3] The Cabinet is composed of the Heads of the Chief Departments, removable by the President, responsible to him only. Few have had experience in Congress. Early in the Union they were characterized as 'chief clerks'; and even now they are in no sense colleagues of the President, in the sense which British Cabinet Ministers before the war were colleagues of the Prime Minister. They have little independent discretion apart from the President. His word is their command. The Constitution said nothing of a 'Cabinet,' but by the force of continued action and convention an Executive Council has arisen which 'combines the aid of united wisdom with single responsibility.'[4] This enables the Departments to be kept in touch with each other and with the President. An 'administration policy' stands a good chance of becoming law when President and Congress are in accord. But the President is alone responsible for the 'faithful execution of the laws.' He therefore deals with his Cabinet on his own terms, dependent upon his character and political position. Thus, Wilson dismissed Lansing in February 1920 for holding a Cabinet Council without authorization; but the two men had been long drawing apart in policy.[5] The men are thus removable without means of defence, yet the President cannot by the force

[1] Cf. Roosevelt, op. cit.; and *State Papers*, vol. ii, p. 525.
[2] Cf. Taft, op. cit.
[3] Cf. *Manchester Guardian Weekly*, February 25, 1921; and *New Republic*, February–April 1921.
[4] Cf. Finlay and Sanderson, op. cit., p. 230.
[5] Cf. *New Republic*, February 25, 1920; and Lansing, *The Peace Negotiations*.

of modern government work alone: it would seem the best thing to decentralize Presidential responsibility—bring the Cabinet on to the floor of Congress.[1]

The conduct of foreign relations is in the hands of the President alone; but the power of declaring war is in the hands of Congress, and the power to conclude treaties rests with the President and the consent of the Senate by a two-thirds majority. Historically the President has not allowed any encroachment upon his independent power to conduct relations with other countries, though he has been influenced by Congressional resolutions—they have been a guide to public opinion. He may bring war upon the country by his policy; but his need to have recourse to Congress for a declaration of war has kept him in contact with Congress. His powers, too, to recognize foreign governments, states of neutrality or belligerency, have usually been exercised after ascertainment of Congressional opinion, though Wilson's action with regard to Mexico in 1914, and the first Revolution, showed that a President could maintain his own view without Congressional support. As regards the making of treaties the important question arose: When is the advice and consent of the Senate to be taken? Presidents often refused information during the course of negotiation, and of late years calls for information from either House are almost invariably qualified by the phrase 'if not incompatible with the public interest.'[2] Gratuitous advice from the Senate in the shape of resolutions is only advice, and need not be taken. *Yet the need to get the treaty consented to* led to preliminary conversations with Senators,[3] as, for instance, Wilson's conferences with Senators at the White House in 1919.[4] The Senate acts mainly through the Committee on Foreign Relations, which keeps a constant supervision over the course of foreign affairs, and reports to the Senate, and on occasion

[1] Cf. *New Republic*, June 16, 1920.

[2] Cf. E. S. Corwin, *The President's Control of Foreign Relations*, p. 91. This book contains the best treatment of the subject. Chow, op. cit., chapter iv.

[3] Ibid., p. 185, and Roosevelt, op. cit.

[4] Cf. International Conciliation Association, Publication No. 153; *The Treaty of Peace in the United States Senate*, p. 360 et seq.

enters into careful investigation of treaties submitted by the President.[1] The House of Representatives also keeps a watch on foreign affairs, because it is often called in to give effect to clauses of a treaty. The President then has made international compacts of a temporary nature and not demanding enforcement by the United States Courts; these have, so far, been too few for effective protest by the Senate; his power of using armed force in a 'sort of war' when American interests and citizens are threatened by foreign Powers has been used often without previous consent, and with subsequent approval of Congress. Altogether the major policies in American foreign relations have been the work of the Executive, and there has been a continuous supervision by Congress which has exercised considerable influence from time to time. How far one could call this democratic control of foreign policy is difficult to say, because nothing is more difficult than to gauge how far Congress and its Foreign Relations Committees are a reflex of public opinion. *In any case no secret treaties can be made as were, and still can be, made in England and France:* American experience here affords a good guide.[2]

Two great party 'machines,'[3] Democratic and Republican, without a vital point of difference between them, save in their traditions for the last thirty years, run the Congressional, Senatorial, and Presidential elections. They are spiritually lifeless, yet it has become such a religion to vote for the candidates put up by the 'organization,' that it is real heresy to attempt to pursue an independent course of action in choosing the Governors of the United States. The parties and paid politicians were able to get their original grip on the life of the nation because it so wanted to make money that 'the effective exercise of its political right was becoming rather an embarrassment than otherwise'; and because democratic

[1] Cf. International Conciliation Association, Publication No. 153; *The Treaty of Peace in the United States Senate*, p. 363 et seq.

[2] We have not yet had sufficient experience of the League of Nations to warrant an estimate of its effect upon the making of secret treaties.

[3] See Ostrogorski, *Democracy and Political Parties*, vol. ii; Bryce, *American Commonwealth*, vol. ii, Part III; Macy, *Party Organization*; Lippmann, *Preface to Politics*.

theory made electoral offices so numerous, and resulted in such 'blanket ballots,' that electors left the task of making up lists of candidates to professional politicians well paid out of the spoils of office. Corruption awakened the American people, and a reform movement started in the eighties of last century. New rules were made for the 'primary' nominating meetings and other party electoral conventions; but the 'machine' still controls the supply and support of candidates. From time to time the two 'regular' parties are combated by 'third' parties, e.g. Farmer-Labour Party, Populists, Socialists; but party life still runs in two moulds. It is the 'invisible Government.'[1] The presidential election is a good example of the power of the 'invisible Government.' The Constitution-makers laid it down that the President should be elected by special colleges of electors composed of men elected in each State. These would then vote for a President. It was hoped that such special State Colleges would be 'free from sinister bias.' Parties arose to co-ordinate the voting in the different States; and soon the original machinery broke down through the force of party action. Now party representatives go from the States and the Territories to the National Convention of the party. These party delegates are elected by conventions elected in their turn by primary meetings. The State delegates are expected to vote together for the same candidate. The National Conventions each choose their ultimate candidate for the Presidency from among all the 'favourite sons' and 'favourites' amidst heat, confusion, intrigue, processions, and fervent oratory. The final negotiations which bring about a 'break' in favour of one candidate are known only to some half-dozen men at the head of the party 'machine.' The presidential campaign then starts, with a special raising of enthusiasm in 'doubtful' States. The Colleges of Electors are elected according to party strength, and the candidate provided by the nominating Convention is elected by them automatically, and, since

[1] Cf. Root, 'Invisible Government' in *Addresses on Government and Citizenship*, p. 191; and A. M. Kales, *Unpopular Government in U.S.A.*, Chicago University Press.

voting for the College is by ' general ticket ' for the whole State (and this enables a party with a small majority to secure the whole College), and the numbers of electors per State varies, it is possible for the President to be elected by a minority of all the voters. Presidents are chosen more because they are good candidates than because they are able men ; the campaign leaders and those who provide funds expect a say in policy and appointments ; but the office has usually elevated the President morally. The Constitution does not limit the number of terms ; convention limits it to two.

IX

Summing up, we may say that American government is not adequate to the needs of the country, for the following reasons :

(1) Responsibility is not patent as in a Cabinet system ; and separation of powers stultifies governmental action.

(2) The country is large, needs a place for legitimate privilege to localities and groups, yet has made no provision for such by a conscious redistribution of functions.

(3) The dominant ' *social expectation* '—that is, the criterion of a good life which most people expect of one another, is still intensely materialistic : it is the ' dollar-standard ' ; and the political institutions therefore tend to become glorified commercial institutions in an atmosphere of industry run by private enterprise. Congress and the Courts, in this background, become in great measure instruments of people who can pay for them ; yet it is those who cannot pay for them that need them most.

The reform movement is strong, but, unless it is based upon a new ' social expectation,' a conscious analysis of purpose, and a change of standards, ' State-blindness,' in Mr. Wells's phrase, and the commercial standard, must continue to have, as their natural fruit, such a Congress and such policies.

CHAPTER VI

CONCLUSION

THE result of this brief survey is, I think, to show the immense importance of looking at government from a *dynamic* point of view. It is worse than useless to conceive it as an *unchanging* piece of machinery.

Government is never a set, hard-and-fast *being*, but always a *becoming*; and it *ought* to become according to the nature and needs of man. Since this is so, we have an immediate argument for the free expression of opinion in modern societies. Societies are so complex, and the individual will is so easily lost beneath the flood of forms, and the card-indexes, that the mould of Government will set and stand, not as a servant, but as a tyrant, unless there is a continual flow of suggestion and criticism—free, informed suggestion and criticism. Therefore a new education is required of the whole people, adolescent and adult. For only in that way can be broken the vicious circle of ignorance handed on to the child (whom the poor teacher is wrestling to educate) by an ignorant parent.

Expression of opinion must be free; yet this is threatened by partial Governments. Recently, for example, the Postmaster-General in America [1] improperly used his power to refuse cheap postal rates, to prevent the circulation of newspapers containing the expression of opinions not in accord with his own. As political conflict becomes more concerned with the question of rights to property, which, of course, were not made within the Six Days of Creation,[2] it is likely that more intolerance will be shown to the free expression of opinion.

Suppose that the Press is in the hands of wealthy syndicates, who for private advantage provide news and opinions without too strict a regard for exact truth.

[1] Cf. dissent of Brandeis J. in Masses Publishing Co. *v.* Burleson Supreme Court, 1921, in which the issue of government interference with free expression of opinion is admirably stated, and cf. *New Republic*, January 26, 1921, February 16, 1921, and March 30, 1921.

[2] Cannan, *Coal Nationalization*, p. 6.

Wealth would then be able to defeat political democracy; for each vote cast will have been influenced by propaganda, and the organization with the most money can conduct the most effective play upon ignorance and the non-rational impulses of the modern preoccupied elector. To him participation in politics comes far down in the list of necessary daily activities. Viscount Bryce says: 'Democracy—which is merely a form of government, not a consideration of the purposes to which government may be turned—*has nothing to do with economic equality*'[1] (italics mine). Yet the best chapter in his *Modern Democracies* is his description of the power of the Press and a visualization of what might happen in a democracy if 'a capitalistic combination' acquired many newspapers. 'They could, by presenting facts of one colour and tendency, and suppressing or discolouring all news of an opposite tendency, succeed in impressing, if not on the majority, yet on a large percentage of voters, whatever opinion they desired. The weaker kind of politician would succumb to them. Ministries would fear to offend them. Foreign countries would soon begin to recognize their supremacy.'[2] There can be no political democracy without economic equality and freedom. What is a vote if a voter is a puppet, and fearful to lose his livelihood?

If we look at Government from the dynamic standpoint we see clearly, too, the importance of personality and courage in government. Such factors make institutions. We discern, too, the ideal function of the democratic Leader. He should always be on the watch for the spirit of new life moving in his people, and strive to give it adequate expression. More, he should, by his appeals, educate, not darken the truth; and by his words and actions seek to sublimate or divert the baser impulses of mankind, to the end that the riches of the world may be enjoyed in peace.

[1] Op. cit., vol. i, p. 76. [2] Op. cit., p. 121.

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Readers who wish to go further into the subject are referred to the works mentioned in the footnotes.

INDEX

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